

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 2**

**NEW SCHOOL UNIVERSITY**

**Employer**

**and**

**Case No. 2-RC-22697**

**ACADEMICS COME TOGETHER/UAW  
(ACT/UAW)**

**Petitioner**

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record in this proceeding, the undersigned finds: <sup>1</sup>

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The parties stipulated and I find New School University (referred to as the Employer or University) is a private, non-profit institution of higher education with its principal place of business located at 66 West Fourth Street, New York, New York. Annually, the Employer derives gross revenues in excess of \$1,000,000 and purchases and receives goods valued in excess of \$50,000 directly from suppliers located outside the State of New York. Accordingly, I find that the Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

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<sup>1</sup> The Employer and the Petitioner filed timely briefs, which have been duly considered.

3. I find that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c) (1) and Section 2(6) and (7) of the Act.

5. At the hearing in this matter, the Petitioner initially sought to represent “all faculty” employed by the Employer. In its brief, the Petitioner has moved to amend the petition<sup>2</sup> to seek an election in a unit consisting of part-time faculty and part-time teaching staff (also referred to collectively as part-time instructors) and to exclude from the unit all full-time and core faculty members, as well as those faculty members serving as department chairs, associate chairs and program directors, and part-time faculty members teaching in the Employer’s Jazz and Contemporary Music Program (Jazz Program)<sup>3</sup> and in Ballston Spa, New York. The Employer agrees with the Petitioner that the full-time and core faculty, department chairs, associate chairs and program directors, should be excluded from the unit as it is contended that they are supervisory personnel and/or managerial employees under the Supreme Court’s holding in *NLRB v. Yeshiva University*, 444 U.S. 672 (1980). The Employer also agrees with the Petitioner that the part-time faculty members teaching in the Jazz Program and Ballston Spa should be excluded from any unit. The Employer, contrary to Petitioner, asserts that the following classifications should be excluded as well: concentration chairs, curriculum coordinators, advisors, part time/affiliated faculty<sup>4</sup> and certain other members of the part-time faculty and part-time teaching staff. The Employer further asserts that the part-time faculty teaching in University programs situated at Montefiore Hospital in the Bronx and at the Smithsonian in Washington,

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<sup>2</sup> I am treating the representations made in Petitioner’s brief as a motion to amend the petition. The motion is hereby granted.

<sup>3</sup> The part-time faculty members who teach in the Jazz Program are represented for purposes of collective bargaining by the American Federation of Musicians, Local 802. The parties agree that these faculty members, constituting a separate appropriate unit, should be excluded from the unit herein.

D.C. should not be included in the unit, because they do not share a community of interest with other the other part-time instructors sought by the petition. Petitioner seeks to include these part-time faculty members in the unit. Additionally, the Employer argues that only those faculty members who have taught two three-credit courses, or the equivalent, in the previous and current academic years should be eligible to vote. The Petitioner argues that the Board should adhere to its traditional eligibility formula. The Petitioner has stated that it is willing to proceed to an election in any unit or units found appropriate herein.

### **New School University**

The Employer is a private, nonprofit college with its main campus located in New York City's Greenwich Village. It offers programs of study, credit and noncredit, at all degree levels through the doctorate. The Employer is comprised of seven schools and one program, each with its own history, academic culture and curricula. These are the Graduate Faculty of Political and Social Science (Graduate Faculty), the Robert J. Milano Graduate School of Management and Urban Policy (Milano), Eugene Lang College (Lang), Parsons School of Design (Parsons), The New School, Mannes College of Music (Mannes), the Jazz and Contemporary Music Program (Jazz Program), and the Actors Studio Drama School (Drama School). In the Fall semester of 2002, the university enrolled over 7,000 degree candidates, and more than 9,000 continuing education students. The Employer's academic programs are accredited by the Middle States Association, the National Association of Schools of Art and Design (NASAD), the American Psychological Association (APA), the National Association of Schools of Public Affairs and Administration (NASPAA) and the National Architectural Accrediting Board (NAAB). The following section will provide a general overview of the University and its administration, primary governance mechanisms and faculty. Individual schools will be discussed in detail, below.

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<sup>4</sup> Part time/affiliated faculty members teach in the University's Robert J. Milano Graduate School of Management and Urban Policy.

### University Administration

New School University is formally operated by a Board of Trustees. Fifty individuals sit on the Board, which self-elects its trustees for a four-year term of office. The Board of Trustees deals with matters ranging from budgetary issues to approval of academic appointments and conducts its affairs through 13 committees, specifically the Executive, Audit, Budget Planning, Building and Grounds, Development, Educational Policy, Fund for New Initiatives, Information Technology Advisory Board, Institutional Policy, Investment Advisory Group, Investment Committee, Nominating, and Committee on Student Services.

Each school or program has a Board of Governors that is the trustee governance mechanism of the individual schools. These Boards of Governors assist their respective Deans with a range of activities related to running their schools, such as providing advice on student recruitment and educational programming.

The President of the University<sup>5</sup> has oversight over academic, fiscal and other matters and serves ex-officio as a Trustee and supervises the business and affairs of the University, subject to the control of the Board of Trustees. The internal operations of the Employer are governed by the President in conjunction with other officers of the administration<sup>6</sup> and the deans of the academic programs. The Provost is the senior academic officer of the university, responsible for the academic life of the institution, and all the deans report to her. The Deputy Provost is responsible for academic planning, program evaluation and academic policy formulation. The university officers and deans attend all full Board meetings. However, they are excluded from participation in executive sessions.

### Faculty Classifications

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<sup>5</sup> The current president is Robert Kerrey.

<sup>6</sup> The university officers consist of the executive vice-president, the provost, the secretary of the corporation and six vice presidents. There are currently two vice president vacancies.

The Employer generally classifies faculty members as full-time faculty, core faculty, part-time faculty and part-time teaching staff. During the 2002-2003 academic year, the Employer employed approximately 2000 faculty members. Of this number, approximately 150 were full-time faculty. Full-time faculty members teach a full course load (typically five courses per semester) and receive multi-year appointments. Only the Graduate Faculty (the University's graduate school) has faculty who are either tenured or on an appointment track whereby they are eligible to receive tenure. Core faculty members teach fewer courses than full-time members, but also receive multi-year appointments and the same benefits as those received by full-time faculty members. Part-time faculty members teach in the University's degree programs and part-time teaching staff teach in non-degree granting programs. Additionally, there are other faculty designations which are particular to a given school or program, and these will be discussed below.

#### University Governance

During the 2002-2003 academic year, there were 21 University committees, 11 of which had faculty representation. In general, members of University committees are appointed by the Provost or the President, although the Deans play a role in terms of suggesting prospective members. In general, membership on University committees is comprised of administrators, full-time and core faculty members and the majority of faculty representatives on these committees are full-time faculty members.

#### Faculty President's Committee

The Faculty President's Committee was established in the Spring of 2002 in response to a faculty initiative to increase faculty input into decision-making processes at the University. The Committee, which is chaired by the President, serves as a forum for the President to brief the faculty about events of concern to the University and is additionally charged with drafting by-laws for a prospective faculty senate, which is not yet in existence. There is a steering committee, comprised of two full-time and one core faculty member, which establishes the

Committee agenda and is primarily involved in drafting the by-laws. University faculty members who do not sit on the Committee have no input into the drafting of the by laws for the proposed faculty senate.

Each school of the University is represented on the Faculty President's Committee. Provost Elizabeth Dickey testified that the faculty members of the Committee were appointed as a result of elections held in each school or program. However the record shows that the nature of faculty selection is not consistent among the schools. For the 2003-2003 academic year, 27 faculty members were listed as members of the Committee. Fourteen were members of the full-time faculty (three of whom were chairs and one who was an assistant chair), two were members of the core faculty, 9 were members of the part-time faculty and one was a member of the part-time teaching staff.

#### Other University Committees

In addition to the Faculty President's Committee, the two committees that the President chairs, which meet most regularly, are the Deans and Officers of the University, which meets monthly and the University Academic Policy Group, comprised entirely of administrators, which meets every two weeks. This committee drafts academic policy. On other standing committees which address academic policy, faculty membership is primarily drawn from the ranks of full-time and core faculty. In most of these committees, faculty members constitute a minority of those appointed. These include the Committee on Learning Resources, a committee which provides policy guidance relating to the use of libraries, computers and information technology, the Advisory Committee on Speech Activity and Expression, the University Committee on Diversity, the Committee on Distributed Learning, and the University Committee on Honorary Degrees. Committees in which faculty members constitute a majority include the University Disciplinary Panel, which has 5 faculty members (3 full-time, 1 part-time and 1 part-time teaching staff) among its 9 members, the University Committee on Harassment which has 9 faculty members (6 full-time, 1 core and 2 part-time) among its 14 members, and the University

Institutional Review Board which has 6 faculty members (5 full-time and 1 core) among its 7 members.

#### Middle States Review Committees

As part of its accreditation review of the University, the Middle States Association requires the University to produce a self-study entailing broad participation by members of the University community. The most recent self-study, which issued in February 2002, was developed by a coordinating committee, consisting of 7 members, headed by Deputy Provost Jackson Kytte, and co-chaired by two full-time members of the faculty. Eight subcommittees, established to consider University-wide issues, were chaired by full-time or core faculty members, and had faculty representation, almost exclusively from full-time faculty.

In addition, each school of the University was represented by a subcommittee that was charged with preparing a report dealing with matters such as the composition of the school's student body and faculty as well as curricular matters. Each subcommittee was chaired by an administrator, and all, except for one, had faculty participation, again largely drawn from the ranks of the full-time faculty. There was a Steering Committee comprised of the Self-Study Coordinating committee, the University subcommittee chairs, school subcommittee chairs and members at large. This Steering Committee had 7 faculty members, all full-time, among its 34 members. Of the 91 individuals who served on divisional subcommittees for the self-study, 38 had faculty appointments. Of these, 26 were full-time faculty (including 8 chairs and directors) 2 core faculty members and 10 members of the part-time faculty (6 were chairs and directors).

#### Classification, Compensation and Benefits and University Policies

This section will provide an overview of the various classifications of faculty as well as their compensation, benefits and the university policies applicable for each group. It should be noted, however, that there is some variance in the specific roles played by particular faculty designations within the various schools, which are addressed below.

### Department Chairs and Program Directors

Department chairs have responsibility for specific departments, or programs. They are responsible for recruiting faculty, overseeing curriculum development, student recruitment and admissions and providing guidance to faculty members. They participate in the hiring of faculty, but generally do not have final authority over appointments, and the record reflects that the role played in this regard varies from school to school. Program directors provide supervision and guidance to faculty members, build curriculum, review course syllabi and monitor faculty member's performance through classroom visits and a review of student evaluations.

### Full-Time Faculty

As noted above, the majority of the full-time faculty members at the University are neither tenured nor eligible for tenure. Only 34 have tenure, and they all teach in the Graduate Faculty. Full-time faculty members receive full health insurance and dental insurance for themselves and their families. In addition, an amount equal to 7-10% of their wages is contributed annually toward retirement. They also receive life and disability insurance, tuition benefits at other institutions and full tuition for themselves, their spouses and children at the University.

### Core Faculty

Core faculty members teach fewer classes, but are otherwise treated in many ways as full-time faculty members. They are expected to play a role in curriculum development and University governance. This classification exists in Lang and The New School, two schools of the University. In addition, in the Graduate Faculty, there is a classification of "half-time" faculty member. These faculty members are on multi-year appointments and, according to the Employer, this position is comparable in status to core faculty. Like the non-tenured full-time faculty, the core faculty members serve pursuant to multi-year contracts.



### Part-Time Faculty

Part-time faculty members are hired to teach in degree programs. They are hired to teach particular courses, and their appointments are dependent upon sufficient enrollment. All part-time faculty members are hired by semester or academic year, and are paid monthly. In order to be eligible for benefits, part-time faculty must teach two 3-credit courses in both the previous and current academic years. Part-time faculty members who are eligible for benefits receive the less expensive of two health insurance options available to full-timers, as well as dental insurance. They also receive limited tuition benefits, for themselves only, and only within their own division. Part-time faculty members who have taught at least one course per year in each of the prior two academic years are entitled to pension contributions equal to 5% of wages.

### Part-Time Teaching Staff

Part-time teaching staff members are hired to teach on a part-time basis in non-degree programs. They are hired to teach a particular course, dependent on sufficient enrollment. Teaching staff members make less per course than part-time faculty members and are eligible for fewer benefits. Those teaching staff members who have taught two 3-credit courses in the previous academic year, and are scheduled to teach an equivalent amount in the current year, are eligible to receive a stipend of \$500, which can be applied towards any number of benefit options.

### University Policies

There are different University handbooks for full-time and part-time faculty members. Full-time and part-time faculty members are subject to differing policies relating to academic leave, appointment and reappointment, retirement, travel, termination and external tuition benefits.

Full-time faculty members are eligible for both paid and unpaid academic leave. Paid leave policies include one semester at full pay and one year at half pay, based upon length of service. Part-time faculty members who have taught for six years are eligible to apply for paid

leaves of one semester at full pay or one year at half pay. There is no provision for unpaid leave for part-time faculty members.

As noted above, full-time and core faculty members are appointed for multi-year terms. Full-time faculty members are expected to conduct research, artistic work or other professional activities. They are also expected to serve on standing and ad-hoc committees of their department and division, and otherwise assist in the governance of the University. In contrast, the part-time faculty handbook provides that they only assume responsibility for teaching courses that are part of the instructional program of a particular department or division. They are not required to serve on committees or otherwise participate in governance. Appointments are for a stated period or term and are subject to review. Part-time teaching staff members are employed per course.

Full-time and core faculty members are subject to a University-wide reappointment procedure. During the final year of the term of appointment, a faculty review committee reviews and evaluates the full-time or core faculty member's scholarship, teaching and research. A recommendation regarding reappointment is then sent to the Dean of the faculty member's school, the Provost and the Board of Trustees for approval. After two successive reappointments, the term of appointment offered to the faculty member may be extended. If the review of the faculty member is negative, there is usually a one-year grace period of appointment.

Full-time faculty members are subject to a policy restricting their teaching at other universities. There is no comparable policy in the part-time faculty handbook. In fact, as discussed in detail below, many of the University's part-time faculty and teaching staff are accomplished professionals in their respective fields and teach at other educational institutions.

## **The Academic Schools and Program**

### **The Graduate Faculty of Political and Social Science**

The Graduate Faculty of Political and Social Science (Graduate Faculty) offers Master of Arts and PhD programs in the social sciences and philosophy. There are eight departments: Anthropology, Economics, Philosophy, Political Science, Psychology, Sociology, Historical Studies and Liberal Studies. The Graduate Faculty also offers a number of interdisciplinary programs. In Fall 2002, the Graduate Faculty had an enrollment of approximately 1,000 degree students.

#### **Administration and Faculty**

The Graduate Faculty administration is headed by Dean Richard Bernstein and includes an Associate Dean and others who report to the Office of the Dean. The Graduate Faculty instructors include full-time faculty members, who may be tenured, tenure track or non-tenured, half-time faculty members with multi-year contracts (this faculty designation has standing similar to that of core faculty), visiting professors and part-time faculty members. Certain of the full-time faculty share a joint appointment with other divisions of the university.

In the 2002-2003 academic year, 37 full-time tenured or tenure track faculty members taught at the Graduate Faculty. Six faculty members were half-time faculty with multi year contracts. The Graduate Faculty and Eugene Lang College share 13 joint faculty appointments and there is an additional joint appointment with The New School. There were 29 part-time and visiting faculty members.

#### **Governance at the Graduate Faculty**

The Executive Faculty, consisting of full-time and half-time faculty members, is charged with the Governance of the Graduate Faculty. It serves as the primary policy-making body, overseeing matters such as curriculum, programs and courses. The record reflects that certain recommendations of the Executive Faculty may be implemented without review by, or approval of, the Dean. Those policies so implemented have included the faculty grievance procedure,

and certain procedures for the Appointment/Reappointments and Tenure Committees. Full-time and half-time faculty members also engage in extensive committee service. In particular, there are committees that make recommendations regarding appointments, reappointments and tenure. Historically, the majority of these recommendations have been approved by the Dean, the Provost and the Board of Trustees. By contrast, part-time faculty members at the Graduate Faculty do not play a role in determining policy. They are not part of the Executive Faculty and are not involved in committees or faculty decision-making processes.

The Employer does not dispute the inclusion of the Graduate Faculty's part-time faculty into the proposed unit.<sup>7</sup> As noted above, however, the Employer contends that certain eligibility standard should apply. This will be discussed below.

#### **Robert J. Milano Graduate School of Management and Urban Policy**

The Robert J. Milano Graduate School of Management and Urban Policy (Milano) offers degree programs for professions in advanced service economies and the corporate sector. Milano offers graduate degrees in Urban Policy Analysis and Management, Health Services Management and Policy, Human Resources Management, Non Profit Management and Organizational Change Management. The school also offers a PhD in Urban Public Policy.

The main campus of Milano is at the Greenwich Village campus of the University. Approximately 650 students attend classes at this location. In addition, an extension of the Health Services Management and Policy Program operates from Montefiore Hospital in the Bronx. Approximately 20 students are enrolled in this program, most of whom are nurses at Montefiore. There is also a campus in Ballston Spa, which is located in upstate New York, which offers both a Master's and Bachelor of Science degree in Human Resources Management. The facilities at this location are furnished by the United States Navy and are 164 miles away from

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<sup>7</sup> As the Employer notes, the Board has traditionally excluded visiting professors from bargaining units inasmuch as they do not have an expectation of continued employment at the institution where they are teaching as visitors. *Goddard College*, 216 NLRB 457, 458 (1975). The Petitioner does not seek to include visiting professors.

the Employer's main campus. It is staff with part-time faculty members who are hired locally. This location is also administered locally and the Department of Defense standards are used in determining admissions. There is no student or faculty member interchange between Ballston Spa and the main campus.

While the parties are in agreement that the full-time faculty members and department chairs, as well as the part-time faculty teaching at Ballston Spa should be excluded from the proposed unit, the Employer additionally seeks to exclude a classification it refers to as "part-time/affiliated" faculty on the basis of their governance responsibilities and the fact that certain of their terms and conditions of employment are at variance with those of part-time faculty members.

#### Administration and Faculty

Milano is headed by Dean Edward Blakely and its administration includes an Associate Dean for Student Affairs, as well as Directors of Development, Administration and Budget, Admissions and Recruitment and Career Development and Placement.

During the 2002-2003 academic year, Milano had 23 full-time faculty members, including three visiting professors. Thirteen members of the full-time faculty are in "extended employment" status, which is a form of tenure, and unique to Milano.<sup>8</sup> In addition, 5 full-time faculty members are designated as "professors of professional practice", which are defined as individuals of "significant professional stature who may not have pursued a scholarly career, but who have advanced degrees and have many years of senior experience in their fields."

Milano generally has between 40 and 50 part-time faculty members teaching at its Greenwich Village campus in each semester. The Montefiore Hospital program campus has two on-site part-time faculty members, and there are approximately 20 part-time faculty members who teach at the Ballston Spa facility.

While full-time faculty members are recruited through a nationwide search, part-time members are recruited by department chairs<sup>9</sup> who, along with the Associate Dean, recommend and decide whom to hire. Generally, such part-time faculty members are not academics, but are professionals in their fields. With the exception of the part time/affiliated faculty, discussed below, part-time faculty members do not have service obligations to Milano or to the University, and there are no non-teaching duties specified in their appointment letters. Moreover, their role in curriculum development is circumscribed. They are hired to teach a particular course at a given time. Part-time faculty members are given guidelines spelling out what their syllabi must include and instructed to meet with their program chairs to discuss curriculum and program requirements. The syllabi of part-time faculty members are also reviewed by the Dean.

#### Part-time/Affiliated Faculty

Five of the part-time faculty members at the Greenwich Village campus are known as part-time/affiliated faculty members, although this designation does not have official status within the University. Such faculty members not only teach, but also may tutor and advise students, and participate in some form of governance. Part-time/affiliated faculty members are paid on a monthly basis, rather than per course, and are compensated separately for their advising and committee work. The record reflects that two of members of the part-time/affiliated faculty are involved in some committee work at Milano, and one participates in curriculum development.

#### Eugene Lang College

Eugene Lang College (Lang) is the undergraduate, liberal arts college of the University. It is located in the University's Greenwich Village campus. The school enrolls over 650 students per year and offers a Bachelor of Arts (BA) degree, as well as a joint Bachelor of Arts, Bachelor

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<sup>8</sup> Extended Employment "represents a long term commitment by the [University] to an individual faculty member based upon continuing competence and a high degree of compatibility between the talents and career goals of the individual and the goals of the institution."

of Fine Arts (BA/BFA) degree in conjunction with both Parsons and the Jazz and Contemporary Music Program. Lang also offers a Bachelor or Arts/Master of Arts (BA/MA) degree in Media Studies in conjunction with The New School and a Master of Arts/Master of Science (MA/MS) degree in conjunction with both the Milano Graduate School and the Graduate Faculty. Lang students select a curriculum concentration rather than a traditional major. These include writing, literature, theatre and dance, arts in context, urban studies, cultural studies and media, education studies, psychology, philosophy, social and historical inquiry, religious studies and science technology and society. The faculty positions at issue with respect to Lang include curriculum coordinators and certain part-time faculty members, in particular those who have taught for four or more semesters. The Employer seeks to exclude these faculty members from the unit.

#### Administration and Faculty

Lang's administrative staff is comprised of the Dean, Associate Dean, Director of Admissions, Director of the Internship Program, Associate Director of Academic Advising, Development Officer, Director of Sophomore Advising, the Director and Assistant Director of Budget and Administration, Systems Coordinator & Assistant to the Assistant Dean, Director of the Writing Center and First Year Writing, Director of the Internship Program, Administrative Coordinator for Academic Chairs, Acting Director for Student Development, Coordinator for Student Programs as well as other admissions and advisory counselors.

In the Spring 2002 semester, Lang had 15 full-time faculty members and 54 part-time faculty members. Additionally there were 13 joint appointments, primarily with the Graduate Faculty. In the academic year 2002-2003, and in prior years, Lang had no core faculty members. However, the Lang Executive Committee recently approved a proposal to create such positions, and two long-term part-time faculty members were so appointed. These core

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<sup>9</sup> At Milano, department chairs are full-time faculty members who usually continue to teach, in addition to their administrative duties.

faculty members receive salaries that are equivalent to half the salary received by a full-time faculty member and they receive the same benefits as are offered to full-time faculty members. Like their full-time faculty counterparts, core faculty members are appointed to multi-year contracts. Full-time faculty members are required to participate in governance, and the new core faculty members are required to participate in at least one substantial committee or activity. Other than the core faculty members, those part-time faculty members who have taught at Lang for more than four semesters are also eligible to serve on Lang committees.

### Lang Governance

In the 2002-2003 academic year, Lang had 11 concentration chairs and one program director. The duties attendant to these positions are similar. Ten of the concentration chair positions were filled by full-time faculty members, as was the program director position. One part-time faculty member served as a concentration chair, and received additional compensation for this service. This individual became a core faculty member as of the Fall 2003 semester. The Lang concentration chairs and program director are responsible for curriculum development, evaluating and making recommendations regarding the hiring the part-time faculty within their respective departments and advising students.

The General Faculty at Lang is charged with the development of academic policy. The General Faculty is defined as all Lang full-time faculty members, full-time joint appointments with other schools of the university, and those part-time faculty members who have taught at Lang for more than four semesters. While part-time faculty members not meeting this criteria may attend meetings of the General Faculty, they may not vote.

The two other primary governance committees at Lang are the Executive Committee and the Curriculum Committee. In the 2002-2003 academic year, Lang's Executive Committee, included five elected representatives from the Curriculum Committee, two elected full-time faculty members, one elected full-time joint appointment and two part-time faculty members who are elected by those part-time faculty members with voting rights at the General Faculty. The



Dean sits ex officio. The Executive Committee deals with academic, personnel and other issues affecting the Lang faculty and student body. The Committee generates recommendations, which are forwarded to the Dean, and which are generally approved. The Dean sets the agenda for those matters to be considered, and will bring those matters involving difficult decisions to the Committee for advice. A subcommittee of the Executive Committee, comprised solely of full-time faculty members, deals with faculty appointments and reappointments. Recently, the Executive Committee as a whole recommended changes to the procedures for the hiring and reviewing of part-time faculty members, and these changes were accepted by the Dean.

The Curriculum Committee consists of 11 full-time faculty members, one part-time faculty member, two students and two administrators. Ten of the 11 full-time faculty members and the one part-time faculty members serve as concentration chairs. The other full-time faculty member is Lang's sole program director. The Curriculum Committee may either make its recommendations directly to the Dean, or consult first with the General Faculty. The record establishes that in the past ten years, the Dean has approved all recommendations forwarded by the Curriculum Committee. The Committee decides the direction and content of the Lang concentrations. The Committee also considers recommendations from concentration chairs regarding the reappointment of part-time faculty members.

Of the 54 part-time faculty members employed in the Spring 2003 semester, 19 had taught for 4 semesters or more. Of these, only three (one of whom was a concentration chair) sat on Lang committees. One part-time faculty member served on the Faculty President Committee. However no other part-time faculty member served on standing University committees during the year. In addition, one non-chair part-time faculty member served on the Lang Self-Study Subcommittee. The record also establishes that, with the exception of the Executive Committee, the Dean chooses the faculty members to serve on all committees.

### **Parsons School of Design**

Parson's School of Design (Parsons) was founded in 1896 and merged with the University in 1970. Parsons offers a variety of undergraduate and masters degrees, and also operates an extension division that offers continuing education classes for adults and classes for children. In the 2002-2003 academic year approximately 2,600 students were enrolled in degree programs, and there were about 5,000 adults in its continuing education programs. The Parsons campus is located at the University's Greenwich Village campus, and it also holds courses at the Fashion Education Building and offers a Master's in Decorative History at the Cooper Hewitt Museum, both of which are located in New York City. Additionally, Parson's offers a Master's Degree in the History of Decorative Arts located at the Smithsonian, in Washington D.C. (Smithsonian Program). During the 2002-2003 academic year, Parsons employed 32 full-time faculty members, 768 part-time faculty members and approximately 200 part-time teaching staff. The D.C. campus is run by two full-time administrative employees and has between 5 and 10 part-time faculty members per semester. While the parties agree that the Parsons department chairs and program directors should be excluded from the unit, the Employer further contends that curriculum coordinators and certain part-time faculty members should be excluded insofar as they are managerial and/or supervisory personnel. In addition, the Employer contends that the part-time faculty teaching in the Smithsonian Program should be excluded as they fail to share a community of interest with other Parsons part-time faculty.

### **Parsons Administration**

The Parsons administration includes the Dean, Randy Swearer, Vice-Dean Lesley Cadman, 4 Associate Deans, an Assistant Dean, 6 Directors, and various assistants and counselors. Department chairs and program directors oversee curriculum, hiring and the evaluation of faculty and staff. They are also responsible for advising students and managing the school's facilities and budget. Department chairs are on administrative, rather than faculty, contracts, although they may also choose to teach. They serve on various governance bodies.

Associate chairs work with chairs on curricular issues, hiring and evaluation, as well as scheduling and advising. According to Vice-Dean Cadman, they have responsibility for faculty and curriculum. They may be under either faculty or administrative contracts. Program Directors may be either full-time faculty members or administrators. Some report to a chair, while others do not. They are involved with curricular issues as well as faculty hiring and coordination, and represent their department on committees.

#### Curriculum Coordinators

Curriculum coordinators may be full-time or part-time faculty members. Part-time faculty members receive additional compensation for such service. Last year, 33 part-time faculty members served as curriculum coordinators. According to Vice-Dean Cadman, their role is similar to that of a director, but they deal only with a segment, rather than an entire program. The record reflects that while curriculum coordinators conduct interviews of candidates for part-time faculty and teaching positions, the decision as to whether to actually hire the candidate is made by the department chair or program director. While Vice-Dean Cadman testified that curriculum coordinators make recommendations regarding hiring, there is no specific evidence regarding this authority in the record. Nor does the record establish whether the recommendations of curriculum coordinators are the sole criteria by which hiring determinations are made, or one of a number of factors entering into such a decision. Part-time faculty member Barbara Siegel, who has served as a coordinator in the past, testified that her primary responsibilities were to hold meetings to convey information and to monitor the part-time faculty to see if they were following the curricular guidelines promulgated by the department chair.

#### Faculty

Full-time faculty members are hired through national searches, similar to those used to fill other full-time faculty positions at the University. They are given multi-year appointments and are subject to a formal review and reappointment process. They are to participate in departmental, school and university committees as part of their service obligations to the

University. Pursuant to the terms of their contracts, full-time faculty members are assigned administrative responsibilities, advising responsibilities, and/or committee assignments within the department, the School and/or the University.

Part-time faculty members teach in Parsons' degree programs. They are hired by department chairs or program directors, and are given appointments for either one or two semesters. They are generally drawn from the ranks of leading professional artists and designers in the New York area. For many members of the faculty, their teaching position at Parsons is not their primary professional affiliation. The appointment contract for Parsons part-time faculty members makes no reference to service requirements. Part-time faculty members are paid a stipend for any advising, committee service, curriculum development and work on exhibitions that they may do. During the 2002-2003 academic year, in addition to the 33 part-time faculty members serving as coordinators, 11 received additional compensation for tutoring and 47 served as student advisors. Part-time faculty are expected to be involved in the curriculum of their own courses, and to insure that their course meets the needs and expectations of the degree program they work in. Part-time faculty member Siegel testified that the curriculum she must follow in the course she teaches is determined by her department. She is provided with specific instruction regarding materials that she should prepare for the students, and is required to submit these materials for review. She is required to attend two "discipline meetings" per semester, at which time changes in the curriculum are discussed. Part-time teaching staff members are hired for one-semester appointments, by the Continuing Education and Special Program Directors, to teach adult education and/or children's classes. They may also be hired separately to serve as part-time faculty in Parsons degree programs. The teaching staff does not serve on committees and are not eligible to do so.

#### Parsons Governance

The Employer asserts that part-time faculty members are "invited" to play a role in governance, but as a general rule part-time faculty members do not participate in Parsons or

University governance. Thus, during the 2002-2003 academic year, 12 part-time faculty members received stipends for having served on various Parsons standing committees. In addition, 6 part-time faculty members served on the Parsons College Council, a governance group consisting of faculty members and administrators which functions as an advisory body to the Dean and other administrative staff. Two part-time faculty members were among the 6 faculty members who served on an ad hoc Integrated Design Curriculum Committee during the 2002-2003 academic year. According to the Employer, part-time faculty members may also participate in the review of department chairs. According to departmental reappointment guidelines, a chair who is up for reappointment provides the names of three faculty members, who are then contacted by the Dean to express themselves about the chair's effectiveness. In addition, the Dean may contact other faculty on his own initiative. Part-time faculty may among those contacted by the Dean pursuant to this process.

Of the 6 Parsons representatives to the Faculty President's Committee, 4 are full-time faculty members (two of whom hold administrative titles as well) and two are members of the part-time faculty. The members of this committee were selected by an on-line vote of Parson's full-time and part-time faculty. However, the College Council Operating Committee, comprised of Vice-Dean Cadman, six administrators and one member of the full-time faculty, selected the slate of candidates. The election was not open to teaching staff. Three members of the part-time faculty who testified at the hearing stated that they had not been informed of the vote and did not participate in any election. With respect to other University committees, of the 15 Parsons representatives who served on one or more standing committees, all but one held administrative titles and the other was a member of the full-time faculty. All the members of the Parson's Self-Study Subcommittee were administrators.

#### Smithsonian Program

The program in History of Decorative Arts at the Smithsonian in Washington D.C (Smithsonian Program) employs two full-time administrators and five to ten part-time faculty

members each semester. The on-site Director reports to the Director of the Decorative Arts Masters degree program in New York.

Academic and administrative supervision are shared by the on-site and New York Directors and the hiring of faculty is handled by the on-site Director in consultation with New York. Terms and conditions of employment are the same as for those part-time faculty members in New York. There is some movement of students back and forth. There is no separate commencement for students in the D.C. program, but they are eligible to participate in commencement ceremonies in New York. It does not appear that the part-time faculty members in the D.C. program have participated in school or University committees or other governance, although Vice-Dean Cadman testified that they would be eligible to do so.

### **The New School**

The New School was established in 1919, and is the founding school of the University. Established as a center for adult education, it continues to maintain that focus. The New School offers over 1000 continuing education courses in each semester in all of the traditional liberal arts disciplines, the professions and the creative and performing arts. In the past twenty years, The New School diversified to add degree programs, ultimately offering a B.A in Liberal Arts and adding graduate programs in international affairs, media studies and creative writing. In addition, The New School offers certificate programs in several areas of study.<sup>10</sup> Non-credit Certificates of Completion are available in Culinary Arts and English as a Second Language.<sup>11</sup> The New School also offers over 300 on-line courses every year, and provides support staff to help instructors adapt courses to an on-line format. Students in the B.A. program may complete

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<sup>10</sup> These include: Film Production, Graphic design and Electronic Publishing, Design for the Web, Web Development, Screenwriting, English Language Teaching (ESL/SFL), Creative Arts Therapies, Alcoholism and Substance Abuse Counseling and Audio Engineering.

<sup>11</sup> The New School offers a variety of cooking courses pursuant to an agreement with the Culinary Arts Program. The instructors for this program are selected by the Director of the Culinary Arts Program. The New School has no responsibility for hiring, supervising or directing the work of these instructors who are compensated by the University as independent contractors. They are not considered New School faculty members, receive no benefits and do not teach on the University's campus. The Employer contends that

their degree requirements on-line.<sup>12</sup> In the Fall 2002 semester, The New School enrolled approximately 6,000 non-degree students, 575 B.A. students and 700 graduate degree students.

#### Administration and Faculty

The New School is headed by Dean Ann Louise Shapiro. The administration also consists of the Associate Dean, Dean Emeritus, Associate Dean for Academic Affairs, Associate Dean for Admissions and Student Services, Associate Dean for Undergraduate Programs, Budget Director, Director of Administration, Director of Development and Alumni Relations, Faculty Services Coordinator, Director of Communications, Assistant Dean, Manager of Special Projects and Director of Publications.

The New School has a number of administrative designations and certain faculty members serve in these administrative capacities.<sup>13</sup> These are: chairs, directors, coordinators and advisors. The parties agree that the chairs and directors should be excluded from the unit. However, the Petitioner seeks to include the coordinators and advisors in the unit, while the Employer argues they, too, should be excluded.

#### Chairs and Directors

Chairs are involved in planning academic programming and policies. In addition, chairs have authority to recruit and appoint part-time faculty and teaching staff. For example, the job announcement for the Chair of the Department of the Humanities states that the hiring and supervision of part-time faculty members is one of this position's responsibilities. Moreover, chairs do not need to consult with the Dean about every appointment. In cases where a search committee is used, such as when a core faculty position is being filled, the committee reports to

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these instructors should be excluded from any unit found to be appropriate, and the Petitioner does not seek to include them.

<sup>12</sup> The New School does not appear to differentiate between those part-time instructors who teach in the classroom and those who teach on-line.

the relevant chair. Directors have duties that are similar to those of chairs, and are responsible for the administration of a particular program. A recent job announcement for the Director of Graduate Studies/Media described the responsibilities of the position as including working with the chair and associate dean to administer the program, curriculum development, faculty recruitment and review and generating grant initiatives. Associate Dean Linda Dunne testified that all directors are responsible for the recruitment and review of faculty, among their other duties.

#### Coordinators and Advisors

Associate Dean Dunne testified that coordinators have duties similar to the chairs of smaller departments in terms of reviewing course proposals and deciding which are appropriate and interviewing and reviewing the credentials of prospective faculty members. According to Associate Dean Dunne, coordinators make recommendations for faculty hiring to their chair or director, which then proceeds to her. While Dunne testified that these recommendations are generally followed, no specific examples were adduced in the record. A standard coordinator appointment letter, however, refers primarily to advisement of students and assisting with the admissions process. It refers neither to curricular duties nor to any role in hiring and review of program instructors. For example, the duties of the Fiction Coordinator in the Graduate Writing Program include advising students, assisting the director with public reading series, advising potential applicants, assisting with admissions, setting up career symposia and occasional committee service. No coordinators testified at the hearing regarding their duties. Most coordinators perform their duties on a part-time basis. In addition to these duties, they also teach. They are paid separately for teaching, and receive distinct appointment letters.

Advisors are part-time instructors who are compensated separately for their administrative duties. According to Associate Dean Dunne, the Film Program Advisor's duties

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<sup>13</sup> In addition, there are non-faculty administrators who are not sought by the Petitioner. The Employer concurs that these non-faculty administrators are not appropriately included in any unit to be found



include advising students and assisting with faculty hiring by interviewing prospective candidates. The Film Advisor's recommendations are then forwarded to the curriculum coordinator who, in turn, takes them to the chair on what Dunne termed an "informal" basis. Brian McCormick, a part-time faculty member at The New School served as Acting Media Studies Advisor for a period of approximately two years, testified that in this role he worked with core faculty members regarding student admissions, interviewed candidates for the M.A. degree program and made recommendations regarding their applications, which were generally followed. McCormick also testified that while he served as Acting Advisor he also served on a curriculum committee where he worked with core faculty members and one other part-time faculty member to develop a summer program. The record establishes that an on-line advisor is responsible for advising students and responding to questions on line and receives a stipend for this appointment.

There is additionally an Assistant Director in English as a Second Language who seeks and interviews prospective faculty members, works on developing syllabi so as to ensure that the curriculum is taught consistently by the various faculty, and is responsible for monitoring student progress. The Assistant Director makes recommendations as to who should be hired to teach a specific course and would make recommendations regarding student placement. Although Dunne testified that such recommendations would generally be followed, no specific examples were adduced. Nor was evidence presented as to whether or not these recommendations were independently reviewed by others.

#### The Faculty

During the 2002-2003 academic year, The New School had 34 core faculty members, 80 part-time faculty members and approximately 500 part-time teaching staff. Core faculty, part-time faculty and part-time teaching staff each receive different appointment letters. Core faculty members receive multi-year contracts and have the duties, responsibilities and privileges of full-

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appropriate herein.

time faculty in terms of teaching, advising students and participation in governance. The initial appointment of a core-faculty member is for a term of three years and is contingent upon the approval of the Dean, Provost and Board of Trustees. Appointment is not contingent upon course enrollment. The Core faculty members are reappointed for three-year terms on the basis of an evaluation of their teaching, scholarship and/or professional activities and service to the University and the profession. Core faculty members are required, without additional compensation, to participate in University and school governance. The core faculty members also play a significant role in faculty appointments, as they participate in faculty search committees, interview candidates and make recommendations to the Dean regarding hiring. According to Associate Dean Dunne, these recommendations generally are followed. They regularly serve on both school and University committees that develop academic policy.<sup>14</sup>

Part-time faculty members and teaching staff are hired and paid per course. The course may be subject to cancellation due to low enrollment or other considerations. Part-time faculty members and part-time teaching staff are hired, overseen, evaluated and reviewed by The New School chairs and program directors. Part-time faculty members and teaching staff are not contractually obligated to serve on committees. Part-time faculty and teaching staff members do not serve on faculty search committees, and committee service of any sort is rare. The few part-time faculty members who have worked on curriculum committees have received additional compensation for such service. In general, part-time faculty members and teaching staff have no input into concentration requirements or other curricular matters. As Associate Dean Dunne testified, even when part-time faculty members or teaching staff do serve on such committees, the decision-making authority lies with the chairs, in consultation with the two associate deans and the core faculty.

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<sup>14</sup> These include the New School Committee on Academic Standards, the New School Committee on Academic Affairs, the Middle States Steering Committee and a number of curriculum committees, among others.

### School Governance

The primary governance body for The New School is the Chairs and Directors Council, which consists of chairs, directors and the Dean's staff. The Dean meets with the Council regularly. No member of the part-time faculty or teaching staff sit on this committee. The Committee on Academic Affairs is chaired by the Associate Dean. Chairs, directors and core faculty members serve on this committee, which addresses academic policy and curricular issues. No part-time faculty or teaching staff serve on this committee. Similarly, The New School Diversity Committee is comprised of 4 core faculty and 4 administrators appointed by the Dean and the Committee on Academic Standards, which considers alleged student violations of academic policy, is comprised of a student, a core faculty member, one chair and one director. The curriculum committee is comprised of the chairs of the School's 4 largest liberal arts departments and the two associate deans. The Dean convenes this committee to discuss new concentrations for the B.A. program. No part-time faculty members or teaching staff serve on this committee.

### MFA Creative Writing Part-Time Faculty

The Employer also seeks to exclude from the Unit all faculty members of the MFA Creative Writing Program (Writing Program). In the Spring 2003 semester, the Writing Program at The New School employed 13 part-time faculty members. Associate Dean Dunne testified that these faculty members have duties that are more in common with core faculty members than with other part-time faculty members. In support of this contention, the Employer points to the fact that these part-time faculty members review student portfolios and make effective recommendations regarding student admissions to the classes that they will teach. Further, they have a great deal of autonomy in structuring their curriculum, are responsible for student advisement and thesis supervision, are given one-year (rather than one semester) appointments and their courses are not subject to cancellation. The record also reflects that MFA part-time faculty members are paid per course as are other part-time faculty members and

receive standard part-time faculty benefits. They are hired by their program director, as are other part-time faculty. They generally do not have committee responsibilities, and only one of the 13 MFA part-time faculty members served on a committee during the last academic year.

### **Mannes College of Music**

Mannes College of Music (Mannes) is a classical music conservatory, as well as a community music school. The school was founded in 1916 and became affiliated with the University in 1989. Mannes has three divisions: the College Division, the Extension Division and the Preparatory Division. Faculty may, and do, teach in more than one division. The school is located on the Upper West Side of Manhattan,<sup>15</sup> although there are plans under consideration for moving its location to the University's Greenwich Village campus.

The College Division has both degree and diploma programs for aspirant professional musicians. Degrees offered include a Bachelor of Music, Bachelor of Science, Masters of Music and a Professional Studies Diploma. Majors are offered in performance fields such as orchestra instruments, voice, piano, harpsichord, guitar and vocal accompaniment for pianists and in nonperformance fields such as orchestral and choral conducting, composition and theory. In the 2002-2003 academic year Mannes enrolled 290 full-time students in the College Division degree and diploma programs.

The Extension Division, a school providing professional and non-professional music study for students over high-school age, offers an adult education diploma program for approximately 50 full-time students and adult education courses for approximately 400 students. The Preparatory Division, a school providing music study for students through high school, enrolls approximately 450 children between the ages of 4 to 18.

Mannes is headed by Dean Joel Lester. Valerie Foyer serves as the Associate Dean of Administration. Associate Dean Lisa Johnson oversees the College Division. Director David

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<sup>15</sup> The school's main building is located at 150 West 85th Street. Additionally, the school leases practice space on West 65<sup>th</sup> Street.

Tcimpidis leads the Extension Division and the Preparatory Division is headed by Director Sue Ann Kahn. The Mannes administrative staff additionally includes an Assistant Dean.

The Mannes faculty is comprised of highly distinguished concert artists, chamber musicians, free-lance musicians and members of nationally-recognized orchestras. Mannes denotes its faculty as either salaried or hourly, although the University's faculty handbooks for full-time and part-time faculty members apply to its staff. There are 6 salaried faculty members, who are full-time faculty with additional administrative duties, including three who serve as the co-chairs of the Techniques of Music (TOM) department in the College Division, as well as the Director of the Mannes Opera, the Director of the Mannes Orchestra and the Principal Conductor of the Orchestra. The faculty is overwhelmingly part-time as there are approximately 300 hourly (or part-time) faculty members. According to the Employer, certain of these hourly faculty members may teach what would be considered a full-time load in other schools of the University. However, the record does not establish who or how many of these individuals may do so. Salaried faculty members have individually negotiated contracts that, in most cases, are for a term of several years. Hourly faculty members receive annual contracts. The record establishes that there is very little faculty turnover, and the Mannes faculty remains largely unchanged from year to year.

The parties are in agreement that the Mannes salaried faculty members, who are all full-time faculty with additional administrative duties, should be excluded from the unit.<sup>16</sup> The Employer additionally contends that all hourly faculty members should be excluded from any unit because they are *Yeshiva* managers and/or supervisors. The Petitioner generally seeks to include the hourly faculty in the bargaining unit, with the exception of department chairs.

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<sup>16</sup> The record reflects that these duties include serving as chairs of departments, recommending faculty for hire and determining curriculum.

### Department Chairs

In 1997, Dean Lester submitted to the Provost of the University a proposal for the creation of formal departments headed by chairs,<sup>17</sup> due to the fact that the growth of enrollment had made it impossible for the associate and assistant deans to manage the school appropriately. Among the proposed responsibilities of the chairs were: to attend auditions, juries, and competitions in their areas; to join the Admissions Committee; to make financial aid recommendations to the Associate Dean; and to “advise the Deans on curricular matters their departments and on faculty appointments.” Many of these tasks had been performed by members of the administration of the school prior to this time, and one of the reasons for the Dean’s proposal was to devolve certain administrative responsibilities to the chairs. Currently, all chairs, with the exception of the TOM Chairs in the College Division, are hourly faculty who receive additional compensation for their service.

In the 2002-2003 academic year, the College Division had 8 chairs: three in the TOM department and 5 others, in the strings, voice, piano, woodwinds and brass departments. Three salaried members served as co-chairs of the TOM department, and the remaining 5 College Division chairs were members of the hourly faculty. The Extension Division had two chairs, of the Composition and TOM departments, who were both hourly faculty members. The Preparatory Division had 9 chairs, all of whom were members of the hourly faculty. Chairs’ duties include attending auditions and juries, recommending students for merit-based financial aid, and assigning students to teaching studios. The record also reflects that department chairs have some role in matters of faculty hiring and curriculum development. For example, TOM Chairs in both the College and Extension Divisions recommend to Divisional directors who should teach what course. In the College, performance department chairs make recommendations on issues of curriculum. They organize special events and master classes, and recruit faculty members. Chairs are involved in admissions decisions and have served as

judges for Honors Program auditions and juries. Chairs generally act as a conduit of information between the administration and faculty, in particular in departments where meetings are not held.

### School Governance

Dean Lester testified that Mannes was thinly staffed administratively,<sup>18</sup> and that, therefore, the hourly faculty members play a significant role in the school's governance. The appointment letters given to hourly faculty members do not contain a requirement for committee service or participation in governance. The record does establish, however, that certain members of the hourly faculty do participate in the school's governance, notwithstanding the fact that the vast majority of them are performing artists or other music professionals with commitments outside the University.

General faculty meetings are held once a semester. For the most part, attendance is low and varies between 20 and 50 faculty members. Such meetings typically entail reports by the Dean, Associate Dean or divisional directors, and the introduction of new members of the faculty. Hourly faculty member Robert Weber testified that, with respect to those meetings he has attended, faculty input is generally not solicited with respect to matters of academic policy or curriculum.<sup>19</sup>

### The Faculty Statutes

The Mannes Faculty Statutes is a document that sets forth the definitions and procedures which define the roles of faculty and administrators at the school. The Statutes were drafted during the 1999 by a committee consisting of nine hourly faculty members, one salaried faculty member and the Dean. The Dean played a major role in this process, typing the document, preparing drafts for the committee's review and encouraging faculty members not to

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<sup>17</sup> At that time, the only formal department was TOM.

<sup>18</sup> Dean Lester additionally testified that the administrative staff has doubled in the time since he became Dean.

insist on provisions that he felt would not pass muster with the Board of Trustees. It is not clear from the record whether the faculty members serving on this committee were appointed by the Dean or came to serve in some other fashion. The record is additionally unclear as to whether, during the drafting of the Faculty Statutes, any new policies or procedures governing faculty and administrators were established, or, if so, what they are. Under the Statutes, faculty members “have the right to advise and consult with members of the Mannes administration in all matters pertaining to the operation of Mannes.”

### Mannes Committees

#### The Executive Committees

Each of the Mannes divisions has its own Executive Committee (EC), comprised of five representatives elected by the faculty of that division, the divisional director or associate dean, and the Dean. According to the Faculty Statutes, two of the five representatives must be from TOM, two from performance areas and there is one at-large representative. Faculty members must be “currently active,” (i.e teaching in a program of the division during the academic year during which the election takes place). Faculty members serve in the EC for staggered 3-year terms. All currently active members of the faculty are eligible to vote in the election for the selection of delegates to the EC of their division. Members of the administration are considered faculty for this purpose and are, therefore, also eligible to vote. Balloting is conducted by mail. For an EC election to be valid, 30% of the faculty in a given division must participate. In the event that threshold is not met, the Faculty Statutes set forth a procedure whereby the polls are kept open, and additional faculty asked to cast ballots to meet the required threshold.

Under the Faculty Statutes the functions of the EC’s are to (1) represent faculty interests; (2) serve as a liaison between faculty and administration; (3) consult and advise directors and deans; and (4) advance the aims and artistic goals of the school. Members of the

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<sup>19</sup> Divisional meetings are optional. There are held in the Preparatory Division and usually entail reports by the Dean, Director and divisional Chairs. Similarly, departmental meetings are discretionary.



EC are expected to consult with their constituents and bring items of faculty concern to meetings. In addition, the Faculty Statutes provide that consultative and advisory functions of each EC include such areas as: academic standards, the curriculum, grievances (discussed below), the composition of the faculty in matters of hiring, evaluation and reappointment, budgetary priorities, financial aid policies, appointments to Mannes and University committees, admissions, other faculty concerns, and searches for a new director or associate dean of the division.

Dean Lester is an ex officio member of all Mannes committees, and attends all faculty and EC meetings. The record has conflicting testimony with respect to the level and extent of Dean Lester's participation in these meetings and to what extent his agenda will control what is discussed. Dean Lester testified that he often stayed out of preliminary discussions so as to act as a neutral voice in the event of disagreement. However, other witnesses testified that he was an active participant who frequently voiced his opinions. In any event, the record is clear that the EC's operate by consensus, not by vote, and that this method was the Dean's choice.<sup>20</sup> There was no evidence presented, and the record fails to establish, that there has been a situation where the other faculty members of an EC were to reach agreement on a matter to which the Dean was opposed, where the Dean accepted the consensus of the others as tantamount to an "effective recommendation."<sup>21</sup> Lester testified that the faculty, through their participation in the EC's and other school and University committees had significant input into academic standards, budget, curriculum, faculty hiring and reappointment, financial aid, committee reappointments and searches for administrators. Hourly faculty member Mary Barto, who has served on the

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<sup>20</sup> As Dean Lester testified: "We talk an issue until everybody is agreed on the course of action. And then we, that becomes something like it was generally agreed. That's the consensus of the meeting. And if the meeting has a consensus, I generally approve it."

<sup>21</sup> Dean Lester pointed to a discussion in the College Division EC relating to whether faculty should be allowed to see each other's comments regarding student demonstrations, or "juries" as they are known. According to Lester, the faculty members at the Executive Committee made numerous suggestions that resulted in a change in the existing policy to which he was opposed. In particular, the Dean felt that confidentiality should be maintained, but other faculty members felt otherwise. The record establishes,

EC's in both the Preparatory and Extension Divisions, testified that the EC's are informed of applicable academic standards and how faculty members can fit within those standards; that directors present curricular proposals and ask for comments; that her input has never been solicited with respect to faculty hiring, reappointment or evaluations, budgeting, financial aid or admissions. Barto acknowledged, however, that the EC's do discuss faculty appointments and that the faculty representatives undertake to represent faculty interests.

In total, 13 Mannes faculty members (12 hourly faculty members and one salaried faculty member ) served on EC's in the 2002-2003 academic year.<sup>22</sup>

#### Combined Executive Committee

There is currently a formalized requirement for annual meetings for the combined EC's. Initially, the committees planned to meet without the Dean present. However, he subsequently announced that, as an ex officio member of all Mannes committees, he would attend such meetings. The record reflects that the combined EC did not meet in the past year. Hourly faculty member Robert Weber testified that he attended one such meeting of the combined EC and that it was substantially similar to the divisional EC meetings he had attended.

#### Preparatory Division Combined EC and Chairs Meetings

In the Preparatory Division there are meetings that combine the EC and the Division's chairs. Such meetings, initiated by the Director, are convened several times a year and bring together four senior administrators, ten chairs and the five faculty members of the Preparatory EC. The Dean testified that this committee was involved in faculty governance.

#### Election Committee

This committee conducts elections for EC representatives and for the school's representatives to the Faculty President's Committee. It consists of three members, one selected from each EC.

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however, that after a discussion of this topic in the EC, the Dean met separately with the department chairs, all of whom echoed the faculty's view. Subsequent to this meeting, the Dean changed the policy.

### College Division Admissions Committee

The College Division Admissions Committee consists of administrators and faculty members who review applicants' audition rankings<sup>23</sup> and entrance exams and consult with the chairs of the relevant departments to determine which students to admit. The committee is comprised of three salaried faculty members and six hourly faculty members in addition to the Director of Admissions, two admissions counselors, the Associate Dean and Director of Academic Advisement. In addition, the coordinators of the Instrumental Studies and Vocal Studies and the Director of Non-Academic Studies are consulted when applicants to their departments are being considered. Admissions decisions are made by consensus among the administrators and faculty in conjunction with the department chairs. Faculty members to this committee are not elected, but rather appointed, through, as Dean Lester stated, a "consensus" of representatives of various constituencies. In particular, the TOM curriculum is heavily represented due to the distinction between the Mannes curriculum and that of other conservatories. In fact, all three salaried TOM department chairs serve. It appears from the record that certain other faculty representatives on the committee also serve or have served as department chairs as well.

### Grievance Committee and Procedures

The Faculty Statutes set forth a choice of faculty grievance procedures. A faculty member may elect to follow an informal process, whereby discussions are confidential and information about the grievance or dispute will be disclosed only to those whom the faculty member agrees have a "need to know." In the alternative, the faculty member may invoke a formal dispute resolution process. To initiate this process, the faculty member files a written complaint with the head of his or her division, who investigates the situation and responds to the faculty member in writing. In those cases where the faculty member does not accept the

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<sup>22</sup> Two faculty members, Mary Barto and Stanley Dorn, were elected to serve on two EC's.

decision of the Director or Associate Dean, the faculty member may ask that the matter be reviewed by the Dean. Upon request, the Dean will submit the matter to the Mannes Faculty Grievance Review Committee. This committee consists of three members, appointed during September of each academic year. Each EC, at its first meeting of the year, nominates two faculty members in that division, and the Dean selects one of these two nominees from each EC to constitute the Committee. When a matter is submitted to it, under the Faculty Statutes, the Grievance Committee reviews the facts and circumstances of the faculty member's complaint and submits a written report to the Dean. The Dean may meet with the faculty member and any other concerned parties prior to reaching a determination, which is set forth in writing. The faculty member may submit the Dean's determination to the Provost of the University. It appears from the record that no formal grievance procedures have ever been brought before the Grievance Committee.

#### Faculty Assistance Committee

Two hourly faculty members from each division serve on the Faculty Assistance Committee, which allocates funds among faculty applicants. In 2003, there were 11 applicants who requested a total of over \$16,000 in assistance. The fund, however, contains a total amount of \$2,000 to be allocated to faculty members. The members of the committee are appointed by the Dean, who selects one of two nominees put forward by each EC. Each committee member receives a stipend of \$100 for their service. The record further reflects that the committee is provided guidelines as to how such monies are to be distributed. For example, in March 2003, the Dean issued a memorandum to the members of the committee setting forth suggestions regarding (1) the criteria to use in reviewing the applications, (2) a list of projects that had received funding in the past, and (3) proposals which had not been funded in the past. The recommendations issued by the committee that year were approved by the Dean.

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<sup>23</sup> The auditions are conducted by performance faculty members. Members of the Admissions Committee do not conduct auditions.

### Other School Committees

The College Academic Standing Committee reviews students in the College Division who are in academic difficulty. Dean Lester testified that this committee is empowered to act on its own authority. It is comprised of one salaried faculty member (who is also a department chair), two administrators, (one of whom is a member of the hourly faculty as well) and two hourly faculty members who do not have administrative roles. The College Scholarship Committee, appointed by the Associate Dean subject to the approval of the Dean, is comprised of administrators and major-area coordinators of the college. This Committee makes the financial aid decisions in the College. While Dean Lester testified that College EC discussions on financial aid are common, Weber testified that financial aid was not a topic of discussion in the College EC during the time he was on the Committee.

The College Division Scholarship Committee is comprised of administrators and two hourly faculty members who are paid a stipend for their current administrative duties. Both of these individuals have previously served as full-time administrators (one as assistant dean), who also had teaching duties in the past.

### University Committees

There are 7 Mannes representatives serving on standing University committees. Two are salaried faculty members, two are administrators, one is a member of the hourly faculty who receives additional compensation to perform additional services and two are hourly faculty who do not have administrative roles. The Mannes Self-study Committee consists of five administrators as well as two salaried faculty members, who are both chairs. There are two representatives to the Faculty President Committee: Barto and David Loeb, who is a salaried faculty member and TOM Chair.

### Academic Standards and Curriculum Development

The Techniques of Music curriculum is a basic feature of a music education at Mannes. It is an intensive course of instruction integrating ear-training, dictation, solfege, keyboard,

music theory and Schenkerian analysis.<sup>24</sup> The TOM curriculum, considered Mannes's "signature curriculum," was developed in the 1940's and is still taught today. While this curriculum is well-developed and established, Dean Lester testified that the faculty had significant input into curricular issues. For example, the record establishes that hourly faculty members have input into the content of the courses that they teach, and some input in guiding other curricular matters as well. Private lesson instructors select the pieces their students prepare and the instruction books from which they learn. In addition, individual faculty may propose certain electives to the Dean or Associate Dean. TOM faculty members and chairs meet weekly to discuss curricular and other issues. In response to concerns brought to the TOM chairs by the chairs of the Voice department, the TOM faculty recently decided to add an extra hour of sight singing for freshman voice majors. After some discussion in the College EC, the Dean and Associate Dean decided to implement the change.

The Employer contends that, through their participation in the EC's, hourly faculty members formulate academic policy. Minutes of the EC's placed into evidence for Thursday April 26, 2002 contained the following items:

Dean Lester updated the committee on searches and staff changes, Concert Hall renovation University matters, Commencement and end-of-year faculty meeting planning

Dean Lester led discussion of the circulated draft of the Mannes Middle States Goals and Objectives

The Committee discussed and rejected a recent proposal to revive the organ major at Mannes

The Committee discussed options for resolution of scheduling conflicts arising in the calendar owing to religious holidays for the April 2003 Mannes College juries. Associate Dean Johnson will pursue the options.

[Associate Dean] Lisa Johnson updated the Committee on admissions and enrollment statistics from March 2002 auditions and April 2002 juries.

Dean Lester updated the Committee on progress toward a proposed

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<sup>24</sup> Schenkerian theory, in brief, is a way of looking at music structure that was developed by the Austrian musician after whom it is named.

Director of Chamber Music (new appointment beginning fall 2002)  
and curricular issues involving TOM courses and undergraduate voice majors.

In a similar vein, the meeting held the prior month (March 2002) began with a report by Dean Lester regarding current faculty searches, staff changes, the concert hall renovation, and other curricular and University matters; a report by Associate Dean Johnson regarding the successes of the March 2002 auditions and a deliberation regarding possible changes to the Opera performance schedule. In addition, Associate Dean Johnson raised concerns regarding the curriculum of the Vocal Accompaniment major, and it was determined that this would be discussed at a future meeting. In the February 2002 EC meeting, the committee discussed a faculty proposal to revise performance class requirements in the guitar program, and made the determination that the curriculum would remain unchanged. Associate Dean Johnson raised the issue of encouraging students to speak English in the classroom and stated she would draft a memo to faculty to that effect. In addition, the committee approved a request that non-string instrumentalists receive compensation as accompanists for required graduation recitals. In November 2001, the EC, among other things, discussed master's degree program requirements, and graduate electives, and approved a motion to restrict the number of graduate electives in a given semester as "per advisement from faculty and administrative advisors." In addition, there was discussion of the English as a Foreign Language program, admissions and graduate level coursework, and an agreement that the committee would further pursue this topic.

Other curricular matters discussed in College EC meetings included the development of a piano accompaniment major, changes to the procedures involving the concerto competitions, the consideration and rejection of a proposal to revive the organ major, the rejection of a proposal to revise performance class requirements in the guitar program, and the restriction of the number of graduate electives in the Master of Music program.

The Extension Division EC has addressed matters such as student use of the faculty lounge, identification cards and stickers, the unsuitability of rooms for private lesson instruction and the use of the photocopier. According to the Employer, in December 1999, the Extension Division EC determined that, given the small size of the division, the EC itself would function as an academic standing committee, considering matters related to academic dismissals and discipline. EC member Mary Barto testified, to the contrary, this was announced, without discussion, by the Division Director. The EC has also discussed matters such as the appointment of academic advisors for diploma students, and whether to allow students to bring their children to classes. A determination to generally prohibit the practice was implemented. Other issues discussed at Extension Division EC meetings include the development of a procedure for implementing policy changes, peer faculty evaluations, the establishment of a minimum grade level for diploma program courses and the impact on enrollments and profits of the practice of accepting students from other divisions into classes. It does not appear from the record that action was taken on these issues at the meetings at which they were discussed. In February 2002, the EC discussed a proposal, brought forward by a faculty Committee member, to create a joint program with either the New School or Lang. The Division Director (David Tcimpidis) is reported as stating that this was a "highly complex political issue, which was not possible now, probably it will be in a few years." In a December 2002 meeting, the EC adopted a rule providing that faculty members must report the third contiguous absence by a student to the Executive office. However, the minutes show that this rule was adopted to ensure compliance with government regulations requiring timely notification by the teacher if a student disappears from classes or lessons. During the same meeting, the committee discussed the problems created by allowing students to move forward through the diploma program on a part-time schedule.

Dean Lester testified that the Extension Division EC developed a choral conducting major. The minutes of the meetings where this issue was discussed show that the EC met and



considered a proposed course outline and made the following “suggestions and inquiries”: whether a keyboard class should be a prerequisite, what required theory courses should be offered, the music history requirement, whether it was necessary to add organ instruction to the major, the possible reorganization of the score reading curriculum and the availability of certain classes to students the upper-class years. The EC also discussed a proposal for a commercial music major in the diploma program, approved a course description for a proposed course entitled *A Seminar for Musicians on Music by Women*, and discussed development issues in a proposed course in chamber music pedagogy, including who would be teaching the class, what form the class should take and when it should meet. This EC also discussed a faculty request that the course proposal, *Ear Training for Singers*, be reinstated into the curriculum.

The Preparatory Division EC developed the Preparatory Division Handbook, which codifies the policies and procedures of that division. The EC reviewed and considered various draft paragraphs and proposals, initially prepared by the Director, for what material should be included in the Handbook.<sup>25</sup> Topics of discussion at Preparatory Division EC meetings have included the drafting and revision of student evaluations of faculty, discussion about the development of faculty workshops on student recruitment, the development of special programs such as outreach performances and the allocation of merit scholarships. Other topics of discussion included whether to require a deposit as a prerequisite for returning students, how to make Mannes more attractive to students without altering the non-competitive entrance policy of the division and whether to base financial aid on merit as well as need. The EC has discussed matters involving the Honors Program and the improvement of auditions and juries as a way to stay more competitive with other preparatory schools.

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<sup>25</sup> The Preparatory Division Handbook includes materials relating to: the school year, the Preparatory Division Office, workshops, the Honors Program, concerts and recitals, the Concerto Competition, classroom and concert hall technology, make up lessons and substitutes, scheduling of classes and lessons, department chairs, the EC, faculty evaluation, recruitment and retention, recruitment and retention of students and the school's diversity policy.

Preparatory Division EC minutes for October 24, 2002, demonstrate that at that meeting, Division Director Sue Ann Kahn proposed that Saturday TOM classes begin at 8 am to alleviate room shortages and that the weekday after-school program for high school students be eliminated due to a lack of enrollment. No formal action was taken on either of these proposals. There was a discussion of the proposed relocation of Mannes, and the fact that it would be important to have a member of the Preparatory Division on the building committee due to the impact any relocation would have on that division. There were also discussions regarding the administration's attempt to increase faculty members' compensation and whether the division could raise tuition. In the April 2000 meeting, the school year calendar was reviewed and approved. In addition, in a meeting held in January 2002, "Joel [Lester] spoke about ways Mannes will work towards a balanced budget by 2006/2007. This would include fund raising by deficit reduction. The prep will play a part in this goal by utilizing resources such as alumni and parent involvement. The possibility of a tuition increase in the future was discussed." Later that year, in October 2000, the EC discussed various issues regarding the admissions procedure and financial aid awards. It does not appear from the minutes that any consensus was reached with respect to any of these issues.

The Preparatory Division EC has reviewed its honors programs, and agreed that B- would be the lowest passing grade in order to maintain a place in the program. The EC has also discussed the required music history and chamber music program for senior honors students.

Dean Lester testified that neither he nor any of his administrators had ever dictated academic standards or curricular matters for the EC's to implement. Barto testified that her Directors generally presented their curricular ideas to the EC's and would sometimes, but not always, ask for comments on their outlines. Barto testified that new courses were not reviewed in the Preparatory Division EC, and Weber testified that the College Division EC had little input into curricular matters. The record additionally reflects that in about 1997 the Dean initiated an effort to revise the Mannes College Division humanities curriculum, appointing an ad-hoc faculty

committee to create a program that would educate foreign students in composition, literature, western civilization, art history and music history. The ad-hoc committee, in periodic consultation with the Dean, developed a plan for the curriculum, which the Dean revised, approved and forwarded to the Provost. It has since been implemented.

### **English as a Second Language Program**

The Employer points to the development and implementation of the English as a Second Language curriculum as an example of faculty members' input into curricular matters. The record reflects that hourly faculty member Weber is largely responsible for this design and implementation of this program, that he is the primary (and frequently the sole) instructor in the program and, as such, a number of his curricular recommendations have been implemented. These include the international students mentoring program, the summer ESL program, the seven-language music glossary and the English entrance and placement exam. Weber testified that certain other of his recommendations have not been followed by the Dean. For example, approximately 5 years ago, Weber proposed the implementation of a required ESL composition course for Mannes graduate students whose native language is not English. Several members of the College EC supported this idea, but it was rejected by the Dean prior to any vote by the EC. Such a course is now being implemented because of an evaluation by administrators from The New School, who concurred with Weber that such a course would be useful. Weber additionally proposed that students with low English language proficiency take intensive ESL in their first year in the program, and no other academic classes. This proposal had support among the other members of the College EC, but it was rejected by the Dean.

### **Recruitment, Admission and Advancement of Students**

According to Dean Lester, the faculty has significant input into admissions primarily through EC discussions on such topics as admissions targets and standards, and discussions in the Preparatory Division EC about mandatory juries. Barto testified, in contrast, that the Extension and Preparatory Division EC's have no input into admissions decisions or policy.

Weber testified that in the College EC, the only admissions discussions he could recall related to the English language proficiency of prospective students. Last year he was invited to participate in the meeting where admissions selections were made, but claims not to have input into this process. Those present, in addition to himself, were primarily full-time faculty members and the Director of Admissions.

As for student recruitment, the record establishes that this topic has been discussed at various EC meetings. There has not always been consensus on this issue. For example, the Extension Division EC recommended sending a representative from the division to college fairs. This suggestion was rejected by the Mannes administration.

#### Hiring, Reappointment and Faculty Evaluation

Salaried faculty members are hired using search committees, much as they are in other schools of the University. A recent search committee for the Orchestra Director was comprised of two administrators and several faculty members, both hourly and salaried. The Employer contends that to the extent a discussion of the courses and programs to be offered entails a discussion of the need for faculty to teach those classes and programs, all three EC's have an impact on faculty appointment, evaluation and reappointment. For example, when the Extension Division established a Choral Conducting major, the EC discussed which faculty members might be appropriate to hire, and how faculty members were performing in other programs.

The Employer contends that all three EC's meet as one body to discuss hiring for faculty positions. The minutes of the combined EC meeting on June 11, 2002, relied upon in support of this contention, indicates that the discussion took the form of a report by the Dean as to (1) the appointment of the Director of Academic Advisement; and (2) the impending conclusion of two other searches, for a Director of the Mannes Library and a Major Gifts Officer. The minutes do not establish, however, that there was any substantive discussion of whether any of these individuals should receive their appointments.

Dean Lester also testified that hiring issues arose when new programs were discussed or current programs evaluated; and that hourly faculty members recruit through networking with industry colleagues. The Dean also testified that he hired a Director for the new vocal accompaniment program based upon the recommendations of a number of faculty members, including hourly faculty members, although he was familiar with the candidate on a personal basis, as well. The Dean and Associate Dean Johnson make the ultimate decisions regarding faculty appointments, but they make them in consultation with the existing faculty members, particularly in areas beyond the expertise of these two administrators. As the Dean testified, any appointment decision must be made in close consultation and consensus with the members of the faculty, as they are the experts in their fields. For example, the Dean and Associate Dean, in consultation with the members of the oboe faculty, made the decision to hire a new oboe faculty member. The decision on a new vocal faculty member was made by consensus of the Department Chair, Opera Director, the Coordinator of Vocal Studies and “some of the other faculty.” As Dean Lester testified, both he and the Associate Dean deferred to their colleagues in this decision, as neither of them is a singer. The Preparatory Handbook provides that at the end of each academic year, the Director will review faculty and program needs for the coming year with EC and the appropriate department heads. Barto testified, however, that she has not been asked to provide input into the composition of the faculty members, or with respect to hiring, evaluation or reappointment decisions. Weber testified that he played no role in the hiring or reappointment of College faculty members, and that his input was not solicited.

The Associate Dean and Divisional Directors serve at the pleasure of the Dean. The Mannes Faculty Statutes provides that searches for divisional directors or associate deans and salaried faculty members are to be conducted by the Dean according to New School University guidelines, with faculty participation as agreed upon by the Dean and the Divisional EC. There is no discussion of faculty members’ involvement in searches for hourly faculty. The Preparatory Division Handbook provides that the Director recruits new faculty to fill vacancies and to provide

a choice of teachers in any given subject or instrument, seeking advice from the faculty and the musical community at large.

As provided for in the Faculty Statutes, faculty members, both hourly and salaried, participated in a search committee for the selection of the Dean of Mannes. The committee interviewing Dean Lester prior to his appointment consisted of one salaried faculty member, one TOM chair, and several hourly faculty members, as well as the President and Secretary of the University. After Dean Lester's 5-year term expired, the reappointment process entailed the selection of a number of faculty members, both hourly and salaried, to discuss the Dean's performance with the Acting Provost. The record additionally establishes that the Dean has sought the input of faculty members regarding the appointment of a new chair of the College Division's brass, piano and woodwinds departments. However, the record fails to establish with specificity the extent of faculty input into the selection of these chairs, or what impact such input had on the Dean's determinations. According to the Preparatory Division Handbook, department chairs are appointed by the Director. Barto testified that in the Preparatory Division, the Director appoints chairs without discussion with faculty members, and that she had never been consulted regarding such an appointment.

As for the evaluation of members of the faculty, the Dean testified that the College Division EC recently formalized a written policy to replace a prior informal policy regarding the procedures Mannes follows when assessing the reappointment of relatively new TOM faculty members, affecting both evaluation and potential termination. Both Barto and Weber testified that they had never been observed by administrators or other faculty members or been subject to formal review. Faculty members are evaluated by students, although until fairly recently such evaluations were conducted only in the College Division.

#### Financial and Budgetary Issues

According to Dean Lester, input by faculty members into budgetary matters comes about through discussions of issues such as the use of accompanists and payments for serving on

audition and jury panels. Dean Lester testified that the College Division EC decided that University funds earmarked for salary increases should be applied to fees for participation in such panels.<sup>26</sup> However, the faculty member witnesses who testified denied that this was the case. At a May 2000 combined EC meeting, the EC's were instructed to have discussions on balancing budgetary requirements, but Barto and Weber testified that budgetary issues were decided administratively. Barto testified that the division directors reported on how monies were to be allocated and there was little, if any, discussion of such matters. The record reflects that tuition and fee increases have been announced at EC meetings, however, there does not appear to have been faculty deliberation regarding such matters.

### **Actors Studio Drama School**

The Actors Studio Drama School (Drama School) was founded in 1993 as a partnership between the Actors Studio<sup>27</sup> and the University. The Actors Studio is independent of the University. Located in the Greenwich Village Campus of the University, the Drama School is a three-year program dedicated to training students and offers majors in acting, directing and playwriting. The school awards a Master of Fine Arts degree and enrolls 210 students each academic year. In addition to the degree programs noted above, the Drama School offers instruction in voice and speech, theatre history and movement. Pursuant to the agreement between the University and the Actors Studio, all members of the acting, directing and playwriting faculty must be lifetime members of the Actors Studio.

### **Administration and Faculty**

The Drama School is headed by Dean James Lipton. In addition to the Dean, the administrative staff includes the Associate Dean, Director of Professional Development, Director

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<sup>26</sup> In particular, Dean Lester testified that, due to the fact that there is a limit on the amount which may be allocated to increases to faculty compensation, the College Division EC reached a consensus to increase the fees paid for judging student juries, and to make an according adjustment to the amount allocated to annual increases to the salary paid to hourly faculty. According to Dean Lester, the actual salary paid to any given faculty member is not the sort of information which is shared or discussed with the EC.

of Academic Support Services, Director of Admissions, Administrative Program Coordinator, Program Assistant, Production Supervisor of the Repertory Season, Student/Faculty Liaison and a number of staff members. There is an advisory committee, comprised of Actors Studio members and chaired by the Dean, which meets annually to discuss matters germane to the school, but this group does not have any authority over the curriculum, faculty or administration of the Drama School.

In the 2002-2003 academic year, the Drama School had one full-time faculty member and 39 part-time faculty members. The full-time faculty member is appointed to a term of three years, is paid an annual salary and is subject to the University's reappointment process for full-time faculty members. Part-time faculty members are appointed, and paid according to the courses they teach. Their reappointment is an informal process initiated by an expression of continued interest in teaching, coupled with the Dean's consultation with department chairs and directors. The part-time faculty members of the Drama School receive additional compensation for mentoring, committee service, thesis supervision, teaching master classes and colloquia and running workshops.

The departments of the Drama School are headed by chairs and directors. Chairs head those departments designated as major areas of study, while directors are appointed in the others. The parties are in agreement that the full-time faculty member, who also serves as Chair, as well as the department chairs and directors who are part-time faculty should be excluded from the unit. The Employer additionally contends that certain part-time faculty who do not serve as chairs or directors should also be excluded as *Yeshiva* managers and/or supervisors.

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<sup>27</sup> The Actors Studio was established in 1947 as a laboratory for working professionals in the theatre to present work to each other and develop their craft, in particular the "method" developed by the famed Russian acting teacher Stanaslavski.



### School Governance

As described in their appointment letters, the responsibilities of a chair or director include faculty recruitment, administration of faculty and curriculum, scheduling and conducting monthly faculty meetings, scheduling of courses, program development, on-going student advising, development of recruitment materials, applicant review and supervision of the interview process, coordination of interdisciplinary enterprises and service on university and divisional committees. In addition, chairs and directors may be asked to participate in fundraising events and represent the Drama School at conferences or other professional events.

The Drama School has recently formed a Chairs and Directors Committee, consisting of all the chairs and directors of the academic departments for the purpose of establishing a voice in school governance. This committee meets monthly to discuss matters such as curriculum development, grading policies, academic policies, hiring and review procedures and the thesis and review process. The recommendations of the Committee go to the Dean for approval. Recently, the Committee proposed changing the criteria for academic probation, specifically recommending that a student be placed on academic probation if he or she earns a C+ or below, or has a grade point average lower than 3.0 in a given term. The Dean accepted this recommendation, and has accepted the Committee's recommendations in other areas, as well.

Chairs and directors are additionally responsible for the recruitment of part-time faculty. They make recommendations regarding the hiring of such faculty to the Dean, and these recommendations are generally accepted. Chairs and directors also participate in the evaluation of part-time faculty, either on an informal basis or by written memoranda. Chairs and directors also play a role in the admission of students. The Chairs of the major departments have a final say on the student admissions to their programs, based upon recommendations from the admissions committee.

The Dean's Advisory Council consists of 9 students, 6 faculty members and three administrators. Chairs and directors are responsible for appointing faculty members to the

Council. Currently, 5 of the 6 faculty members on the Council are chairs or directors. The remaining member is from the part-time faculty. The Council discusses matters of importance to the school, making recommendations to the Dean for program improvements with respect to such matters as course requirements and classes.

Certain of the part-time faculty members participate in committee service. In particular, the one school committee in which part-time faculty serve is the Admissions Committee. During the 2002-2003 academic year, 8 part-time faculty members served on this committee. Part-time faculty members also evaluate auditions. Auditions and interviews count heavily in the admissions process. The record establishes, however, that only the chairs, the Dean and the Director of Admissions receive and review all the scores and complete files. While the Admissions Committee makes recommendations on which students to accept, as noted above, the chairs and directors have the final approval of admission decisions. One part-time faculty member serves on the Diversity Task Force Committee, along with Drama School staff and students. This committee discusses diversity issues affecting students, curriculum and admissions. The school has had, in the past, a Repertory Committee, which assists with third-year student performances. This committee was not convened during the 2002-2003 academic year, because the responsibility for thesis supervision was reassigned to part-time faculty teaching third-year courses.

A small number of Drama School part-time faculty members serve on standing University committees. During the 2002-2003 academic year, one member of the part-time faculty served on the University Committee on Harassment, one on the Honorary Degree Committee and one on the University Disciplinary Panel. Two of the 14 members of the Drama School Self-Study Sub-Committee were part-time faculty members. In addition to the two part-time faculty members, this sub-committee was comprised of 5 chairs and directors, 5 administrators and two students. There is one part-time faculty member among the three representatives to the Faculty President Committee.

## **Jazz & Contemporary Music Program**

The Jazz & Contemporary Music Program (Jazz Program) was founded in 1986 by the then-Dean of Parsons, as a freestanding program that he administered. Subsequently, the Jazz Program became a part of Mannes College, where it remained until 1998, at which time it was returned to its original status as a stand-alone entity. The Jazz Program is located in the Greenwich Village campus of the University.

The Jazz Program awards an undergraduate Bachelor of Fine Arts degree. In the 2002-2003 academic year, there were 272 students enrolled in the Jazz Program. The Program is headed by an Executive Director, Martin Mueller, and is administered by a staff that includes a Director of Academic Affairs, Director of Admissions, Assistant Director of Admissions, Director of Budget and Administration, and Director of Development. In addition, there is a technical staff that includes a Coordinator of Recording and Engineering, a facilities manager, two part-time equipment managers and various engineers.

During the 2002-2003 academic year, the Jazz Program had three full-time faculty members and 70 part-time faculty members. Full-time faculty members are hired for three-year terms and subject to University procedures for reappointment. They receive an annual salary, and are required to serve on governance committees, among other duties.<sup>28</sup>

The part-time faculty are hired are appointed per course or per semester, and are paid on an hourly basis. In 1997, the part-time faculty members voted to be represented by Local 802 of the American Federation of Musicians (Local 802). All part-time faculty members are covered by the collective-bargaining agreement (CBA).<sup>29</sup>

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<sup>28</sup> These include scheduling master classes held by visiting professors, advising and placing students with appropriate teachers for individual instruction and conducting weekly planning sessions and fundraising.

<sup>29</sup> By its terms, the CBS excludes all full-time faculty and all other full-time, part-time and temporary clerical and administrative employees, technical employees, student employees, cross-divisional faculty, private lesson instructors (other than those also employed by the Program as regular part-time classroom faculty), visiting faculty and confidential employees, guards, watchmen, managers and supervisors as defined in the National Labor Relations Act.

The record reflects that part-time faculty members serve on committees on a voluntary basis, and receive a stipend for doing so.<sup>30</sup> The CBA provides for the existence of various divisional committees, and sets forth requirements for faculty and/or administrative representation on these committees.<sup>31</sup> Under the CBA, part-time faculty members are obliged to submit their course syllabi for review to the Executive Director or his/her designee. Both the Employer and the Union are in concurrence that, with respect to the Jazz Program: (1) the full-time faculty members should be excluded from the petitioned-for unit and (2) the part-time faculty should be excluded from the unit by virtue of their representation by Local 802.

### **University Undergraduate Liberal Studies (UULS)**

UULS is a general education program available to all undergraduates at the University. It is not a distinct school or division. It does, however, have its own faculty. During the Spring 2003 semester, there were 33 faculty members at UULS, all part-time, two of whom also taught at Lang. The Director of UULS is responsible for hiring and reappointing the faculty. The UULS curriculum is determined by the Director and the Dean of the program. There is no formal governance structure at UULS and there are no committees. UULS faculty members are not represented on the Faculty President Committee. It appears from the record that the parties are

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<sup>30</sup> In the event there are more candidates than available slots, elections are held.

<sup>31</sup> Under the CBA, the Jazz Program's Executive Committee considers matters such as academic policies and procures, appointments and reappointments, course assignments, student life policies, facility safety, health and security issues, the establishment of other committees, diversity and affirmative action issues and membership on University and Program committees. It is chaired by the Executive Director and consists of four part-time faculty members and three full-time faculty members and/or members of the administrative staff. The committee makes written recommendations regarding the matters within its jurisdiction to the Executive Director. The Curriculum Committee makes recommendations concerning development and revision of course and degree proposals, new programs or degrees, new course proposals submitted by individuals part-time faculty members and academic policies applicable to instructional and repertoire requirements. It is chaired by the Executive Director or his/her designee and is comprised of 9 additional persons, 6 of whom are part-time faculty and three of whom are full-time faculty and/or members of the administrative staff. The recommendations of the Curriculum Committee are referred to the Executive Committee prior to a final decision by the Executive Director. In addition, there is a Faculty Review Committee whose jurisdiction relates to recommendations arising from differences between the Executive Committee and the Associate Provost concerning reappointments and course assignments. It is comprised of 7 members, three part-time faculty, two full-time faculty and/or members of the administrative staff, one faculty member or administrator selected by the Program from other units of the University and one outside expert selected from the field of Jazz and acceptable to all Committee members. The chair of the committee is elected by its members by a secret ballot election.

in agreement that it would be appropriate to include the UULS faculty into a unit of part-time faculty employed by the Employer.

### **Continuity of Service of Part-Time Instructors**

As is apparent from the foregoing, part-time instructors perform the overwhelming majority of instruction at the University. And, as the evidence adduced in the record establishes, most of them teach from year to year. This is acknowledged in the University's part-time faculty handbook: "[m]ost of you teach regularly each year and many have taught for a decade or more in your programs." This is consistent throughout the various schools.

Thus, members of the part-time faculty teach approximately one-quarter of all the courses at the Graduate Faculty. Many of these adjunct instructors are distinguished senior colleagues who add to the quality of education at the school. They not only cover for faculty members on leave, but also cover certain sub-disciplines where full-time faculty members do not have sufficient expertise. The evidence shows over half of the part-time faculty who taught at the Graduate Faculty during the 2002-2003 academic year had taught at least once during prior academic years. Certain of the part-time faculty at the school have had episodic employment where they have taught one semester per year for long periods of time, or otherwise have had service breaks between semesters in which they teach.

In Milano, approximately 75% of the part-time instructional staff has taught for more than two semesters. As is the case in the Graduate Faculty, employment may be episodic in that certain faculty members teach recurrently, but not necessarily every semester. The average length of service is over 7 semesters.

In the self-study conducted for the Middle States accreditation review, the University characterized the majority of Lang's part-time faculty as "long term." Of the 54 part-time faculty members who taught at Lang in the Spring of 2003, according to data provided by the

University,<sup>32</sup> almost half taught for two or fewer semesters. However, this data also indicates that a number of part-time faculty have taught numerous semesters as well.

The NASD Self-Study commented that every department at Parsons cited strong and dedicated part-time faculty members as among their most vital resources. Over 750 part-time faculty members taught at Parsons during the 2002-2003 academic year. Of this number, approximately 70% taught during one of the two previous academic years. A significant number of instructors have taught at Parsons for over 10 years.

The data submitted with respect to The New School does not make for an easy determination regarding length of service. The evidence which has been adduced in the record, however, establishes that a very significant percentage of part-time instructors who taught during the 2002-2003 academic year have taught previously for at least one semester.

As noted above, the record is clear that there is very little turnover among faculty members in the Mannes school, and that the hourly faculty members are retained from year to year. As the University self-study sets forth: "Many instructors have taught at Mannes for decades providing stability." Similarly, the University self-study provides that at the Drama School, there is "minimal turnover (historically, less than four new faculty appointments in any given year since 1996); and many part-time instructors, once on board, seek careers at the university." Over 80% of the current faculty members have taught previously. With respect to the UULS instructors, while no data regarding their service was adduced, Dean Bnau testified that some of the faculty members have taught for a number of years.

### **Positions of the Parties**

The Petitioner seeks a unit consisting of all part-time faculty members and teaching staff employed by the Employer. The Petitioner contends that such a unit is an appropriate one for the purposes of collective bargaining. The Employer does not dispute this general proposition.

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<sup>32</sup> With respect to Lang, as with certain other schools, the Petitioner questions the accuracy of the data provided by the University, contending that it tends to underestimate the length of service of part-time

The parties also agree that department chairs and program directors, notwithstanding faculty status, should be excluded from the proposed unit. As discussed above, the Employer additionally contends that certain individuals or classifications of part-time faculty members and part-time teaching staff within certain schools of the University should be excluded insofar as they, too, are either managerial personnel under *Yeshiva*, supra, and/or because they are supervisory personnel. In addition, the Employer argues that all faculty members located at the Milano programs at Montefiore Hospital and Ballston Spa should be excluded, as should the faculty members situated at the Parsons Washington D.C. program because they do not share a community of interest with the other part-time instructors sought by the Petition. The Petitioner agrees with the Employer that those faculty members at the Ballston Spa should be excluded from the unit, but seeks to have the other part-time instructors in remote locations included.

The parties also differ with respect to the appropriate eligibility formula that should be employed herein. The Employer urges that the Board adopt the standard which the Employer has utilized to determine whether part-time faculty members are eligible for health benefits, i.e. voter eligibility should be restricted to those members of the part-time faculty and part-time teaching staff who have taught two three-credit courses, or the equivalent, in the previous and current academic years. The Petitioner argues that the Board should adopt its traditional eligibility criteria and allow any member of the unit who is on the payroll as of the appropriate eligibility date to vote in an election herein.

## **DISCUSSION**

### **The Composition of the Unit**

As noted above, while the Employer does not dispute that a unit of part-time faculty and part-time teaching staff would constitute an appropriate unit, the Employer contends that certain

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instructors.

part-time faculty of the University are managerial employees. The College contends that these particular faculty members or classifications effectively determine and implement the academic policies and operations of the institution, make effective recommendations with regard to academic personnel matters and have a significant role in determining or carrying out many of the College's related activities. The Employer additionally contends, in the alternative, that a number of these faculty members are supervisors within the meaning of the Act. Petitioner contends that authority over academic and non-academic decision-making is not vested in the part-time faculty members and teaching staff, but rather lies with the full-time and core faculty, department chairs and program directors and members of the University's administration, and that none of the faculty sought to be excluded by the Employer are supervisors within the meaning of the Act. In the following section, I will examine the applicable legal standards with respect to both the managerial and supervisory exclusions.

#### Applicable Legal Standards Relating to Managerial Status

In *Yeshiva University*, supra, the Supreme Court found that faculty members at that institution were managerial employees who were excluded from the Act's coverage. The Court defined managerial employees as those who "formulate and effectuate management policies by expressing and making operative the decisions of their employer." Supra. at 682, quoting *Bell Aerospace Co.*, 416 U.S. 267, 288 (1974). The Board held that managerial employees "must exercise discretion within, or even independently of, established employer policy and must be aligned with management," and that they must represent "management interests by taking or recommending discretionary actions that effectively control or implement employer policy." *Id* at 683.

The Court in *Yeshiva* found that through faculty-wide meetings and participation on faculty committees, the faculty at each of the Yeshiva University schools effectively determined curriculum, grading systems, admissions, matriculation standards, academic calendars, and



course schedules. In addition, the faculty at some schools made decisions regarding admission, expulsion, and graduation of individual students, and others made decisions involving teaching loads, student absence policies, tuition, enrollment levels and, in one case, the location of a school. In nonacademic areas, the Court found that the faculty made recommendations regarding hiring, tenure, sabbaticals, terminations, and promotions, and that a majority of those recommendations had been implemented. Relying primarily on the faculty's extensive authority over academic affairs, but also noting their predominant authority in nonacademic areas, the Court approved the Second Circuit's conclusion that the faculty members were "in effect, substantially and pervasively operating the enterprise." Specifically, the Court found that the faculty's authority in academic matters was absolute. They decided what courses will be offered, when they will be scheduled, and to whom they will be taught. They debated and determined teaching methods, grading policies, and matriculation standards. The faculty effectively decided which students would be admitted, retained, and graduated. On occasion the faculty's views had determined the size of the student body, the tuition to be charged, and the location of a school.

The *Yeshiva* faculty members were found to be managerial employees despite occasional vetoes of faculty action caused by "administrative concerns with scarce resources and university-wide balance." *Id* at 688. In *Lewis & Clark College*, 300 NLRB 155, 162 (1990), the Board, considering this language in *Yeshiva*, concluded that there are "college policy questions" (i.e., 'financial resources,' 'general institutional goals,' or 'university-wide balance') that are broader than academic policy matters and from which the faculty members may be excluded, yet still remain managerial employees."

In *Yeshiva*, the Court held that professors may not be excluded merely because they determine the content of their own courses, evaluate their own students, and supervise their own research. Since *Yeshiva*, the Board has held that it is faculty members' participation in the formulation of academic policy that aligns their interest with that of management. See,

*University of Dubuque*, 289 NLRB 349 (1988); and *Livingstone College*, 286 NLRB 1308 (1987). Faculty authority in nonacademic matters is accorded less weight in determining whether faculty members are managerial employees. See, *Lewis & Clark College*, *supra* at 161 fn. 30. In cases where there are substantial indicia of a faculty's managerial status in academic areas, an administration's frequent rejection of faculty recommendations in nonacademic areas, such as faculty promotion and tenure, would not preclude a managerial finding. *University of Dubuque*, *supra*. Nor does effective recommendation in such nonacademic matters as tenure or promotion require a finding of managerial status. See *Loretto Heights College*, 264 NLRB 1107 (1982), *enfd.* 742 F.2d 1245 (10th Cir. 1984). It is not a faculty's authority on paper that determines their status, but rather their authority in practice. See, *Bradford College*, 261 NLRB 565 (1982); and *St. Thomas University*, 298 NLRB 280 (1990).

Under *Yeshiva*, a faculty needs only exercise effective recommendation or control, rather than final authority, to be deemed managerial. In *Lewis & Clark College*, *supra*, the Board emphasized that "neither the Board nor the Court requires that a faculty possess absolute or plenary authority in order to be found to be managerial; the standard set forth in the Court's decision is 'effective recommendation or control.'" 300 NLRB 163 at fn. 41. Effective recommendation authority is found where nearly all recommendations are routinely approved by the administrative hierarchy, without independent review. *Lewis & Clark College*, *supra*.

The Board has held that the party seeking to exclude either a whole class of employees, or particular individuals, as managerial has the burden of presenting the evidence necessary to establish such an exclusion. *University of Great Falls*, 325 NLRB 83, 93 (1997) (citing *Montefiore Hospital and Medical Center*, 261 NLRB 569, 575 n. 17 (1982)). See also *David Kendall Memorial School v. NLRB*, 866 F.2d 157, 160 (6<sup>th</sup> Cir. 1989) ("Because managerial employees are not excluded from coverage under the NLRA by any express language, but rather by an implied exception to the statute, the exception must be narrowly construed to avoid

conflict with the broad language of the Act, which covers 'any employee,' including professional employees") (internal citations omitted).

Since the Supreme Court decided *Yeshiva*, the Board has determined the managerial or non-managerial status of college and university faculty members in a variety of faculty settings. In support of its argument that certain of the part-time instructors herein are managerial employees, the Employer has cited a number of cases in which the Board found that faculty members were managerial employees. For example, in *University of New Haven*, 267 NLRB 939 fn. 3 (1983), the Board found that the faculty had substantial authority to recommend decisions which formulate, determine, and effectuate management policies, and that those recommendations were effective in most cases. During the 6-year period immediately prior to the University of New Haven's refusal to bargain, the faculty promotion and tenure committee submitted 123 positive recommendations, which were all followed by the president. During that same period, the president declined to follow negative recommendations of the faculty in only five instances. Similarly, the recommendations of the faculty sabbatical leave committee had been followed by the administration in every instance save one, and in that case the administration accepted the faculty committee's alternate recommendation. In the area of full-time faculty hiring, the recommendations of the existing faculty were followed in about 90 percent of all cases. Also, faculty or departmental recommendations concerning the hiring of part-time and adjunct faculty were followed in almost every instance, although some undeterminable but apparently small percentage of such hiring may have been performed with little or no input from the full-time faculty.

In *Elmira College*, 309 NLRB 842 (1992) the division chairs, found to be managerial employees, suggested class schedules, set the number of sections which a faculty member could teach, made recommendations regarding salaries to the administration, and planned the academic calendar. In *Elmira*, the faculty members had final authority for establishing standards for developing and approving new courses, approving changes in course levels and

changes in majors and minors, adding courses, setting credit hours, course content, size of classes, curriculum, grading of students, degree requirements, admission and graduation standards, major and minor requirements, and approving applications for waiving academic requirements. Further, there was clear evidence that faculty recommendations were generally followed. Id.

In *Lewis & Clark College*, 300 NLRB 155 (1990), the Board found that faculty effectively controlled academic matters, as nearly all its recommendations were routinely approved, and some academic matters were approved without making recommendations to higher management. Faculty members made academic decisions or effective recommendations in academic areas, such as teaching methods, grades, retention standards, scholastic standards, matriculation standards, admission standards, curriculum and course content, degree and degree requirement, teaching assignments, graduation requirements, academic calendars, departments of instruction, honors programs, scholarship, and financial aid. For example, the faculty approved a new core curriculum, approved new minors, and conversion of the music school to a department, and changed foreign language, math, and writing policy requirements.

In *Boston University*, 281 NLRB 798 (1986), *enfd.* 835 F.2d 399 (1st Cir. 1987), the Board held that the department chairpersons and the full-time faculty were managerial employees. The Board found that the Boston University faculty exercised effective control over matriculation requirements, curriculum, academic calendars, and course schedules and had absolute authority over grading, teaching methods, graduation requirements, and student discipline. The Board also noted that the faculty played an effective role in recommending faculty hiring, tenure, promotions, and reappointments, and that faculty decisions on all policy matters were effectuated in the great majority of instances.

In *Livingstone College*, *supra*, the Board found faculty members to be managerial employees where they exercised substantial authority with respect to curriculum, degree requirements, course content and selection, graduation requirements, matriculation standards,

and scholarship recipients. The faculty members participated in academic governance through membership on various standing committees and by virtue of a faculty-wide vote on recommendations proposed by these committees. Generally, recommendations approved by the faculty were implemented. The Board placed only limited significance on the fact that the faculty had virtually no input into nonacademic matters such as the budget process, tenure decisions, selection of administrators, and no authority in the hiring and firing of faculty. See also *University of Dubuque*, *supra*.

By contrast, in *University of Great Falls*, *supra*, the Board affirmed the Regional Director's conclusion that the faculty members were not managerial employees as defined in *Yeshiva*. There, the Regional Director found that decisions and recommendations made by committees comprised of only a minority of faculty members could not be said to be "faculty decisions or recommendations." *Great Falls*, *supra* at 95, fn. 39, citing *Loretto Heights College*, *supra*, at 1253 in which the Tenth Circuit held that effective control of academic policies cannot be imputed to faculty when faculty comprises a minority of the committee that develops and reviews these policies. Also, there was insufficient evidence to show that committees in which faculty members constituted a majority effectively recommended or otherwise exercised managerial authority. *Id.* at 95. Thus, while the record was replete with evidence in *University of Great Falls* that the committees made recommendations in critical academic areas, the record was vague or silent as to whether such recommendations were generally and routinely approved by the administration or whether those recommendations were independently reviewed and evaluated by higher administrators. *Id.*

Similarly, in *Bradford College*, 261 NLRB 565 (1982), the Board held that the faculty members were not managerial employees where governance documents indicated that they had substantial authority, but where in practice they had little. The Board found that the faculty did not effectively determine teaching loads, salaries, budget, the filling of administrative positions, faculty evaluations, or certain faculty personnel actions. The Board also found that the

administration had canceled an academic session without faculty approval, had sometimes altered grades given by faculty members, and at least in some cases had failed to follow faculty recommendations for the hiring of new faculty members. In determining that the faculty lacked effective authority, the Board considered an accrediting agency's report that reviewed the administration's disregard for stated procedures and for faculty participation in the administration of the college. The Board held that while the faculty and division chairs have the written right to make recommendations, the record shows that such recommendations were often ignored or reversed by the president, by the academic dean, or by both with respect to curriculum, admission policies, graduation of students, course loads, course scheduling, grading of students, faculty hiring or retention, tuition, and faculty salaries. *St. Thomas University, Inc.*, 298 NLRB 280 (1990), citing *Bradford, supra*.

In *St. Thomas, supra*, faculty members did not have absolute control over the curriculum, as all curricular recommendations and every proposal regarding academic policy needed to be approved by the division chairs. Division chairs certified students for graduation, consulted with faculty on syllabus preparation and selection of textbooks, and reviewed proposed class schedules. Further, the administration unilaterally established a law school; eliminated entire degree programs; proposed, drafted, and adopted the vast majority of academic policy and curriculum changes; and played the predominant role in determining curriculum, grading methods, faculty hiring, and tenure. The Board found that the evidence in *St. Thomas* did not establish that the faculty, through committees, had effectively recommended or had been the moving force behind the formulation and adoption of policies, and concluded that the faculty members did not exercise managerial authority as set forth in *Yeshiva*.

Likewise, in *Loretto Heights College, supra*, the faculty members participated in the governance of the college through various faculty-dominated committees. The administration routinely accepted the recommendations of these committees in the areas of academic policy, new courses, grading criteria, faculty promotion, and tenure. In spite of the faculty's power, the

Board found the faculty members were not managerial employees. In making that determination, the Board relied in part on the fact that most of the actions taken in which faculty members participated were in the form of recommendations and advice, and that no faculty member was authorized to take any action on the member's own initiative that would be final and binding on the college. The Board also relied on the presence of a large administrative staff. The Board found that such a staff created a very effective buffer between the top management and the lowest echelon, eliminating the need for the college's administration to rely on the faculty for advice, recommendations, and the establishment and implementation of policies.

#### Applicable Standards Regarding Supervisory Status

Section 2(11) of the Act defines a supervisor as:

any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off recall, promote, discharge, assign, reward or discipline other employees, or responsibly direct them,, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the exercise of independent judgment.

It is well established that Section 2(11) of the Act must be read in the disjunctive and that an individual therefore need only possess one of these powers for there to be a finding that such status exists. *Concourse Village, Inc.*, 278 NLRB 12, 13 (1985). However, the grant of authority must encompass the use of independent judgment on behalf of management. *Hydro Conduit Corp.* 254 NLRB 433, 441 (1981). As is the case with exclusions on the basis of managerial status, the party seeking to exclude an individual as a supervisor bears the burden of establishing that such status, in fact, exists. *NLRB v. Kentucky River Community Care*, 532 U.S. 706 (2001); *Benchmark Mechanical Contractors, Inc.* 327 NLRB 829 (1999). Mindful that a finding of a supervisory status removes an individual from the protection of the Act, the Board avoids attaching to Section 2(11) too broad a construction. *Adco Electric, Inc.*, 307 NLRB 1113, 1120 (1992), *enfd.* 6 F.3d 1110 (5<sup>th</sup> Cir. 1993). The Board has noted that, in enacting Section

2(11) of the Act, Congress stressed that only persons with “genuine management prerogatives” should be considered supervisors, as opposed to “straw bosses, leadmen .... And other minor supervisory employees.” *Chicago Metallic Corp.*, 273 NLRB 1677 (1985) (citing Senate Rep. No. 105, 80<sup>th</sup> Cong., 1<sup>st</sup> Sess., 4 (1947)), *aff’d* in relevant part 794 F.2d 527 (9<sup>th</sup> Cir. 1986). Thus, “whenever the evidence is in conflict or otherwise inconclusive on particular indicia of supervisory authority, [the Board] will find that supervisory status has not been established, at least on the basis of those indicia.” *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989).

With the foregoing standards in mind, I will now address the particular unit contentions raised by the parties.<sup>33</sup>

#### Milano Part-Time/ Affiliated Faculty

As noted above, the Employer contends that the part-time/affiliated faculty members at Milano should be excluded as either managerial or supervisory personnel due to their governance responsibilities. In addition, it appears that the Employer is arguing that, due to the fact that they are paid monthly, rather than on a per-course basis, these faculty members fail to share a community of interest with other part-time instructors. The record establishes that of the five individuals in this title, three have served on Milano committees, and others may occasionally attend monthly meetings of the full-time faculty, apparently on a voluntary basis. On the record as developed herein, I cannot find that faculty members in this classification possess the requisite managerial or supervisory authority to exclude them from the unit. It is well settled that mere participation in faculty governance committees, absent evidence of effective recommendation or actual implementation of “discretionary actions which effectively control or implement employer policy” does not establish managerial status. *Yeshiva*, *supra* at 683; *University of Great Falls*, *supra*. Moreover, I do not find that the difference in the manner in

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<sup>33</sup> The parties agree that the part-time instructors teaching in the Graduate Faculty and UULS should be included in the unit. The Employer’s contentions regarding voter eligibility will be discussed below.



which part-time/affiliated faculty members are compensated to be sufficient to establish that they have a community of interest separate and apart from the other part-time instructors at the University, given the overwhelming similarity in other terms and conditions of employment. I find it appropriate, therefore, to include them in the unit.

#### Lang Part-Time Faculty

The Employer contends that those part-time faculty members who have taught at Lang for four or more semesters should be excluded from the unit. There are currently 19 faculty members who fall within this category. In support of this contention the Employer points to the fact that these part-time faculty members are members of the General Faculty, with voting rights as well as their eligibility to sit on other divisional committees. As noted above, the General Faculty is comprised of all full-time faculty members, full-time joint appointments with other schools of the University, as well as the part-time faculty members with the requisite length of service. In this regard, the part-time faculty members serving on the committee constitute a distinct minority of the committee's full complement. Moreover, there is no direct or specific evidence of academic policy initiatives put forth by any of the part-time faculty members that have come under the General Faculty's consideration. Moreover, I note that the record establishes that, on the whole, responsibility for curriculum and academic policy at Lang falls squarely within the hands of the full-time faculty, chairs and other administrators. The Curriculum Committee is comprised entirely of chairs and the Executive Committee has merely two part-time faculty members among its 10 members. Based upon this record, I cannot conclude that the part-time faculty who have taught for four or more semesters so substantially determine policy as to warrant their exclusion from the unit. *University of Great Falls*, supra; *St. Thomas University*, supra.

#### Parsons School of Design

In the 2002-2003 academic year, 33 part-time faculty members served as curriculum coordinators. The Employer contends that this classification should be excluded from the unit. In

particular, the Employer asserts that curriculum coordinators interview and hire part-time faculty members, and generally have duties analogous to those of program directors and department chairs. Although the Employer attempts to group these classifications together, the record establishes that there are differing levels of responsibility and authority among them that significantly impact upon a determination of whether they have managerial or supervisory authority. Thus, there is testimony that program directors and department chairs have oversight of the curriculum and administration of their respective departments and that they additionally interview, evaluate and effectively recommend the hiring and reappointment of faculty. There is, however, no specific evidence regarding the authority of curriculum coordinators in this regard. In this regard, I note that the appointment letter for the curriculum coordinator position in evidence refers neither to curricular duties nor hiring, but rather to a role in advising students and assisting in the admissions process. Thus, the evidence is insufficient to meet the Employer's burden of proof to establish that the curriculum coordinators are either managerial or supervisory personnel for the reasons asserted by the Employer. *University of Great Falls*, supra at 93; *NLRB v. Kentucky River*, supra. I will, therefore, include them in the unit.

The Employer further contends that, in addition to those faculty members serving as coordinators, certain other part-time faculty members should be excluded on the basis that they are managerial and/or supervisory personnel. The Employer names a number of individual faculty members who are paid stipends for tutoring, serving as advisors, and serving on various Parsons and University committees. The Employer additionally points to the fact that certain part-time faculty members participate in the review of department chairs and serve on faculty search committees.

As regards the development of academic policy, the primary body responsible for formulating academic policies is the Committee on Academic Affairs, which has only 8 faculty members, three of whom are part-time faculty members, among its 28 members. In the hiring and reappointment of, as well as the evaluation of, faculty members, the evidence

overwhelmingly demonstrates that the primary role is played by department chairs, program directors and, to a lesser extent, full-time faculty members. In this regard, I note that those part-time faculty members who appeared at the hearing testified that they did not have input into appointment and reappointment decisions. Thus, I cannot conclude that the record supports the Employer's contentions that certain named individuals should be excluded from the unit due to their tutoring or advising responsibilities or their minority participation on school or University committees. This sort of activity falls short of establishing that these faculty members "substantially and pervasively" determine academic policy or make effective recommendations with respect to non-academic areas. *Yeshiva*, supra at 691; *Loretto Heights*, supra.

#### The New School

The Employer contends that The New School's advisors and curriculum coordinators, who also teach courses, should be excluded from the bargaining unit.<sup>34</sup> The Employer argues that curriculum coordinators have duties similar to department chairs and program directors in terms of setting courses and making recommendations for hiring of faculty members, and that they report to and collaborate with the chairs and program directors in these areas. The standard appointment letter for the position, however, makes no reference to curricular or hiring responsibilities. Moreover, the record reflects that curriculum coordinators' duties primarily consist of advising students and generally assisting within their departments with scheduled events such as readings, poetry forums and symposia, workshops and classes. Although the Employer points to testimony by one member of the part-time teaching staff that his hiring and reappointment were handled by the coordinator in his department, such evidence fails to establish that the coordinator had more than an administrative role in the process or that any recommendation was not independently reviewed by others. Thus, I find that the evidence fails to establish that the curriculum coordinators should be excluded from the unit on any basis

proffered by the Employer. See e.g. *North General Hospital*, supra (mere participation in hiring process does not confer supervisory status); Cf. *Lewis & Clark College*, supra (effective recommendatory authority found to confer managerial status where nearly all recommendations routinely approved without independent review).

There are certain faculty members who have the additional title of advisor, such as the Film Program Advisor and On-Line Advisor. The Employer contends that advisors should be excluded from the unit as well. The record establishes that advisors are typically part-time teaching staff members who are paid separately for their non-teaching duties. The Employer contends that these duties are similar to those of chairs, but the record fails to support this assertion. Although advisors may assist their departments, it is primarily in the area of advising students. Even assuming that advisors have input into curricular and faculty hiring processes, as the Employer contends, the record fails to establish that the extent and level of their participation either extends to the formulation of academic policy within the meaning of *Yeshiva*, or constitutes effective recommendation within the meaning of Section 2(11) of the Act. Accordingly, the advisors shall be included in the unit.

The Employer additionally contends that the members of the MFA Creative Writing faculty should be excluded from the unit insofar as they are managerial personnel. In support of this contention, the Employer urges that they review student portfolios and make effective recommendations regarding student admissions and that they have a great deal of autonomy in structuring curriculum. However, the record establishes that the instructors' role with respect to admissions is limited to those students who will be in their own classes. Similarly, curricular duties are restricted to their own particular classes. Thus, the record fails to establish a sufficient basis to conclude that the MFA Creative Writing faculty members develop academic policy to

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<sup>34</sup> As noted above, the record reflects that there may be non-faculty advisors and coordinators. The Employer contends these individuals should be excluded from the unit, and it does not appear from the record that the Petitioner seeks to include them.

the extent that would bring them within the purview of *Yeshiva* and its progeny, *Supra* at 690 n. 31. I find, therefore, that they should be included in the unit.

The Employer further argues that certain individual members of the part-time faculty and teaching staff should be excluded on the basis that they are eligible to serve and, and have served, on The New School's committees and because they develop course proposals and have input into the curriculum through their involvement in departmental curriculum committees. Based upon the applicable legal standards outlined above, I find that the evidence in this regard is not sufficient to meet the Employer's burden of proof in establishing either that these faculty members are managerial or supervisory personnel.

#### Mannes College of Music

Mannes is the only school of the University operated with the input of governance committees where faculty members constitute a majority of the committee's complement. Thus, each of the Mannes Divisions has an Executive Committee (EC) chaired by the Director or Associate Dean of the Division, and, in addition to the Dean, is comprised of five representatives elected by the faculty of that Division. During the 2002-2003 academic year, 12 of approximately 300 hourly faculty members served on Executive Committees.

While the evidence demonstrates that the divisional EC's have discussed, and considered, matters directly implicating academic policy, there is a conflict in the evidence regarding the scope of authority given to the various EC's. In essence, the Employer argues that the hourly faculty members, through the EC's, determine academic policy and have input into matters such as the hiring and reappointment of faculty. The Petitioner, to the contrary, argues that academic policy and other non-academic managerial determinations are established and implemented by a layer of administration, including the department chairs and program directors.

The Faculty Statutes, which set forth the definitions and procedures governing the role played by the faculty and administration in Mannes, provide that the EC's are empowered to (1)

represent faculty interests; (2) serve as a liaison between faculty and administration (3) consult and advise the directors and deans and (4) advance the aims and artistic goals of the school. Thus, the Faculty Statutes, by their terms, fail to support the Employer's contention that the EC's are managerial in that they neither possess recommendatory authority nor may they act on their own initiative to set policy. The role they play is defined as merely consultative and advisory.

The minutes of various EC meetings which have been introduced into the record establish that while various matters relating to academic policy are discussed and deliberated, and these matters are, without doubt, central to the operation of Mannes, most major policy initiatives are brought forward to the EC's by either the Dean or the head of the Division, and are not initiated by faculty members. Moreover, there is little evidence in the record of any actual, tangible change in curriculum, academic policy or other matters affecting Mannes governance that has occurred as a direct result of deliberation within the EC's. In this regard, I note that the testimony of Employer and Petitioner witnesses differed significantly with respect to the significance of faculty consultation on matters brought before the various EC's, or whether in some instances faculty was consulted at all. Further, the record fails to establish that there is any formal mechanism, other than a post-hoc distribution of minutes, by which the hourly faculty members, as a whole, have input into curricular matters or other non-academic concerns considered by the EC's during the course of the academic year. In this regard, the Board has held where faculty participation in governance committees is limited to only a few members, and the faculty as a whole has no involvement in decision making, managerial status will not be found, even where the committees may, in fact, perform important functions. *St. Thomas University*, supra at 286 n. 47. I do not, therefore, find that the hourly faculty through either their election of representatives to, or actual participation in, the divisional Executive Committees has the authority to effectively recommend, or that it has been the moving force behind the formulation and adoption of policies relating to the operation of the school.

The record establishes that the vast majority of hourly faculty members at Mannes do not participate in any form of school governance and the appointment letters for hourly faculty do not contain any such requirement. With respect to those hourly faculty members who do participate in governance, the record demonstrates that these individuals generally serve as chairs of their respective departments. Thus, the record establishes that the chairs, along with other school administrators, have duties connected with the development of curriculum, new programs, admissions, hiring, student recruitment and retention and other non-curricular matters, which hourly faculty members as a whole, do not.

With respect to other committee service, the record fails to demonstrate that the hourly faculty members possess the sort of authority required to meet the standard for the managerial exclusion under *Yeshiva*. Thus, during the 2002-2003 academic year, approximately 22 hourly faculty members served on University or divisional committees (including the 12 who served on the EC's). Of these, 5 served on the Faculty Assistance Committee, which is charged with the disbursement of a \$2,000 fund among faculty applicants. The record establishes that the Dean provided this committee with guidelines as to what sorts of projects would typically receive funding, as well as information regarding grants that had been previously approved or rejected. The hourly faculty members constitute a distinct minority on the Mannes Admissions Committee. While certain hourly faculty members serve on other committees, such as the College Academic Standing Committee, I find, on whole that such committee service is, at most, "incidental or additional to the principal job of teaching." *Loretto Heights*, supra at 1121. Moreover, there does not appear to be a forum whereby the faculty as a whole deliberates on matters of academic policy. Faculty meetings, which are sparsely attended, are largely informational in nature. The evidence fails to establish any specific recommendation emanating from any general or divisional faculty meeting that the administration acted upon, either in a positive or negative fashion. See e.g. *Loretto Heights*, supra; *St. Thomas University*, supra. Thus, based upon the foregoing, I find that the evidence fails to meet the Employer's burden of

establishing a basis for the exclusion of the Mannes hourly faculty members on either managerial or supervisory grounds. Accordingly, I will include them in the unit.<sup>35</sup>

#### Actors Studio Drama School

The Employer contends that certain part-time faculty members at the Drama School should be excluded on the basis that they are either managerial or supervisory personnel. The Employer contends that these faculty members formulate academic policies through committee service and participate in appointment and reappointment determinations, curriculum development and the admission of students. However, the record establishes that the Drama School follows a defined, and detailed curriculum in accordance with the tenets of the Actors Studio and the Stanaslavski method to which it adheres. As the Employer acknowledges in its brief, the record reflects that the chairs and directors are responsible for curriculum development and oversight. While the appointment letters for part-time faculty members state that they are responsible for determining the method of instruction which they will use, this is limited to their own classes, *Yeshiva*, 444 U.S. at 690 n. 31. Moreover, they are also required to teach their courses in accordance with the syllabus which is on file, and new syllabi must be approved by the chair or director of the department. As for hiring and reappointment, the record establishes that ASDS chairs and directors interview and hire applicants for open teaching positions and make recommendations on who should be hired. Any involvement of part-time faculty in this process is informal, and negligible.

The one area into which part-time faculty have input in this college is admissions. Part-time faculty members evaluate presentations and auditions. However, part-time faculty members do not have access to the applicant's files, and do not make final admissions decisions. On this basis, I find there is insufficient evidence to conclude that certain part-time

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<sup>35</sup> For the foregoing reasons, I find it appropriate to include ESL hourly faculty member Weber in the Unit. The record establishes that his curricular determinations are primarily with respect to those courses he teaches, and it does not appear that he has any indicia of supervisory or managerial status in any other respect.



faculty members take or recommend discretionary actions that effectively control or implement Employer policy at the Drama School. Accordingly, these part-time instructors should be included in the unit.

### Remote Locations

In determining whether employees who work away from a university's main campus should be included in a bargaining unit, the Board examines traditional community of interest factors such as geographic proximity, local autonomy, employee interchange and interaction, functional integration and terms and conditions of employment. *University of Miami*, 213 NLRB 634, 636 (1974). The parties are in agreement that the part-time faculty members employed at the Milano Ballston Spa location fail to share a community of interest with the other part-time instructors sought by the petition. I agree with the parties in this regard. The record establishes that this program, located at facilities furnished by the United States Navy, some 164 miles away from the University's main campus, functions largely in an autonomous fashion. The program is staffed with part-time faculty hired from the surrounding community, and administered locally. The faculty members at Ballston Spa attend separate faculty meetings and have no involvement in Milano committees. Undergraduate admissions are according to Department of Defense standards, and applicants to the Masters program are screened by the local director. Individual students do not take courses at both locations, and there is no interchange or transfer of faculty between them. Thus, in light of the geographic separation between the Ballston Spa and the New York City campus, the complete lack of employee interchange, the extent to which the administration is handled by local administrative staff and the lack of integration of the academic programs, I conclude that the faculty employed at the Ballston Spa facility should be excluded from the bargaining unit.

I do not agree with the Employer that the Milano program at Montefiore Hospital should be excluded. On average, there are two part-time faculty members who teach at this location. The program operates from the Hospital facility, located in the Bronx, and its students are primarily nurses employed by the hospital, but it is administered from the University's main campus. The record establishes that this program shares some of its faculty with the main campus, and that students may take courses at both locations. The hiring and academic supervision of the Bronx faculty is coordinated by the Chair of Milano's Health Services Management and Policy Program. On these facts, I find it appropriate to include the part-time faculty members at the Montefiore Hospital program in the unit.

Similarly, I find it appropriate to include the Parsons Masters Degree program in the History of Decorative Arts situated at the Smithsonian in Washington, D.C. (Smithsonian Program) in the proposed unit. I find, based upon the record, that the Smithsonian program is integrated with the other programs offered by the school. The program has two on-site administrators, who also teach on occasion, and employs between 5-10 part-time faculty each semester who report to the Director of the Decorative Arts program in New York. Academic and administrative supervision are handled jointly, as are the local hiring determinations. There is some movement of students between the programs, and the students in the Smithsonian program are eligible to participate in commencement activities at the New York campus. Based upon the foregoing, and due to common supervision and a certain level of functional integration between the two programs, I find it appropriate to include the part-time faculty members who teach in the Smithsonian Decorative Arts program in the unit.

### **Voter Eligibility**

The Employer contends that only part-time faculty and part-time teaching staff members who have taught two three-credit courses, or the equivalent, in the previous and current academic years should be eligible to vote. The Employer contends that many of the University's part-time instructors are not regularly employed by the University. The Employer contends that

many teach at the University for only one or two semesters in their academic careers. The Employer's proposed eligibility criteria is the same criteria it uses to determine whether a part-time instructor is eligible for benefits. The Employer cites no case where the eligibility formula it has proposed was adopted, but generally relies upon cases where the Board has found it appropriate to impose an eligibility standard for part-time faculty members. For example, in *C.W. Post Center of Long Island University*, 198 NLRB 453, 454 (1972), the Board held that part-time faculty members who had a contract to work in at least two of the three consecutive years, one of those years being the election year, and taught three or more credit hours per semester in each of the two years were eligible to vote. That case, however, was decided prior to the Board's decision in *New York University*, 205 NLRB 4 (1973), and thus dealt with a unit comprised of both full-time and part-time faculty members.<sup>36</sup> In *Catholic University*, 202 NLRB 727 (1973), the Board similarly held that part time faculty members whose teaching load, based upon the number of credit hours per semester, was at least one-fourth the average teaching load of the full-time faculty members and who actually taught during the semester of the election, or during at least one semester during any two of the prior three consecutive years were eligible to vote. Again, this involved a bargaining unit comprised of both full- and part-time faculty. See also *University of Detroit*, 193 NLRB 566, 567 (1971) (part-time faculty members teaching three hours or more per week were regular part-time employees eligible to vote in the election).

The Petitioner, to the contrary, contends that the Region should apply its traditional eligibility standard.<sup>37</sup> The Petitioner contends that the University has, in great measure, made a conscious decision to rely on part-time instructors who are professionals and practitioners in

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<sup>36</sup> In that case, the Board expressed the view that it had been unable, as of that time, to "formulate . . . an adequate standard for determining the eligibility of adjuncts in Board elections." 205 NLRB 4, 6 n.9 (1973).

<sup>37</sup> In its brief, the Petitioner misstates the Board's standard. Under traditional eligibility criteria, voters are eligible voters if they are employed during the pay period immediately preceding the issuance of the

their fields. Moreover, the Petitioner contends that the evidence shows that the part-time instructors, by and large, are a stable workforce with a reasonable expectation of continuing employment from year to year. Therefore, there is no need to, or basis for, imposing any special eligibility requirement involving prior service.

In bargaining units consisting of part-time faculty, the Board has applied traditional eligibility criteria. See e.g. *Parsons School of Design*, 268 NLRB 1011, 1012 (1984) (granting petition to modify unit to include only part-time faculty); *University of San Francisco*, 265 NLRB 1221, 1224 (1982) (ordering an election in a unit of part-time faculty who were employed during the payroll immediately before the direction of election).<sup>38</sup> However, in these cases the issue of voter eligibility was apparently not raised, or litigated, by the parties.<sup>39</sup>

The Board has long recognized that certain industries, or types of employment, require the generation of special rules governing voter eligibility. A balance is struck between the requirement of an ongoing connection with an extant bargaining unit and concern over disenfranchising those who, notwithstanding sporadic employment opportunities within a specific industry, have a continued interest in representation. See e.g. *Trump Taj Mahal Casino*, 306 NLRB 294 (1992), where the Board reiterated its obligation to be “. . . flexible in carrying out [our] responsibility to devise formulas. . . to afford employees with a continuing interest in employment the optimum opportunity for meaningful representation.

In the instant case it is apparent that many of the part-time instructors at issue herein teach consistently from year to year. It is also the case, however, that with respect to a fair number of individuals, their employment may be episodic; that is, they may teach courses once

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Decision and Direction of Election, (not the pay period preceding the election) and are employed on the date of the election.

<sup>38</sup> Similarly, in *New York University*, 332 NLRB No. 111 (2000), the Board applied the traditional eligibility standard to a unit of graduate student teaching and research assistants. Again, the issue of voter eligibility was not raised, or litigated by the parties in that instance.

<sup>39</sup> While the employer in *University of San Francisco* argued that the petitioned-for part-time faculty did not constitute an appropriate unit because they did not have a reasonable expectation of future employment and were thus temporary employees, a contention which was rejected by the Board, the issue of voter eligibility was not directly addressed by the Board.

per year, or once every other year depending upon curricular needs. Then, there may be some faculty members who the University decides do not meet criteria for reappointment either due to dissatisfaction with their teaching or a determination that the course should no longer be part of a given curriculum. Given the evidence adduced in the record in this regard, coupled with the size of the proposed unit, it is reasonable to assume that a fair number of part-time instructors might well fall within each of the foregoing categories. It is for this reason, that I find it appropriate to establish an eligibility formula which will ensure that the voters herein have a continuing interest in employment. I find, however, that the Employer's proposed eligibility standard fails to have support in Board law, and carries the potential to disenfranchise certain part-time instructors whose employment may be episodic, but who generally teach from year to year, and thus have a reasonable expectancy, and thus a continuing interest in, future employment. It is for this reason that I find it appropriate to adopt, in relevant part, the standard employed by the Board in *C.W. Post*, supra, and find that those part-time instructors who have received appointments to teach at least one course in at least two of the last three consecutive academic years, including the current academic year, are eligible voters herein.

Based upon the foregoing, I find that the following constitutes a unit that is appropriate for the purposes of collective bargaining:

INCLUDED: All part-time faculty, part-time teaching staff and hourly faculty employed by the Employer.<sup>40</sup>

EXCLUDED: all other employees, including full-time faculty, core-faculty, half-time faculty with multi-year appointments, salaried faculty, department chairs and associate chairs, program directors and part-time faculty teaching in the Jazz and Contemporary Music Program and in Ballston Spa, New York.

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<sup>40</sup> Eligible to vote are those in the unit who have received appointments to teach at least one course in at least two of the last three consecutive academic years, including the current academic year.

## DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Regional Director, Region 2, among the employees in the unit found appropriate at the time<sup>41</sup> and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations.<sup>42</sup> Eligible to vote are those in the unit who have received appointments to teach at least one course in at least two of the last three consecutive academic years, including the current academic year. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States who are in the unit may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.<sup>43</sup> Those eligible shall vote on whether or not

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<sup>41</sup> Pursuant to Section 102.21(d) of the Board's Statement of Procedure, absent a waiver, an election will normally be scheduled for a date or dates between the 25<sup>th</sup> and 30<sup>th</sup> day after the date of this Decision.

<sup>42</sup> Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer "at least three full working days prior to 12:01am on the day of the election." Section 103.20(a) of the Board's Rules. In addition, please be advised that the Board has held Section 103.20(c) of the Board's Rules requires that the Employer notify the Regional Office at least five full working days prior to 12:01am of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995).

<sup>43</sup> In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *North Macon Health Care Facility*, 315 NLRB 359 (1994); *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, 3 copies of an election eligibility list, containing the full names and addresses of all eligible voters, shall be filed by the Employer with the Regional Director, Region 2, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office at the address below, on **December 29, 2003**. No extension of time to file this list may be granted, nor shall the filing of a request for review operate to stay the filing of such list, except in

they desire to be represented for collective-bargaining purposes by Academics Come Together/UAW (ACT/UAW).<sup>44</sup>

Dated at New York, New York,  
December 19, 2003

(s)Celeste J. Mattina

Celeste J. Mattina,  
Regional Director, Region 2  
National Labor Relations Board  
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extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

<sup>44</sup> Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 Fourteenth St., NW, Washington, DC 20570-0001. This request must be received by the Board in Washington by **January 2, 2004**